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2305
No. 12136

United States
Court of Appeals
for the Ninth Circuit

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

JOE SHOONG,

Respondent.

and

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

ROSE SHOONG,

Respondent.


Transcript of Record

Petitions to Review Decisions of The Tax Court
of the United States

FILED

FEB 17 1949

PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

WALTER J. RENZ, Esq.

For Respondent:

B. H. NEBLETT, Esq.

Docket No. 15475-15476

JOE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1947

Aug. 11—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 12—Copy of petition served on General Counsel.

Sept. 17—Answer filed by General Counsel.

Sept. 17—Request for hearing in San Francisco, Calif., filed by General Counsel.

Sept. 24—Notice issued placing proceeding on San Francisco Calendar. Service of answer and request made.

1948

Jan. 26—Hearing set March 22, 1948, at San Francisco, Calif.

Mar. 22—Hearing had before Judge Kern on merits. Stipulation of facts with joint exhibit 1-A attached. Briefs due 5/6/48—replies 5/21/48.

Apr. 12—Transcript of hearing of March 22, 1948, filed.

May 3—Brief filed by General Counsel.

May 6—Brief filed by taxpayer. 5/11/48 copy served.

May 20—Motion for extension to June 1, 1948, to file reply brief filed by taxpayer. 5/20/48 granted.

June 1—Reply brief filed by taxpayer. Copy served 6/2/48.

June 14—Memorandum findings of fact and opinion rendered, Kern J. Decision will be entered under Rule 50. 6/14/48 copy served.

July 15—Computation of deficiency filed by General Counsel.

July 19—Hearing set August 18, 1948—Rule 50.

July 27—Consent to settlement filed by taxpayer.

Aug. 9—Decision entered, Judge Kern, Div. 16.

Oct. 25—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, filed by General Counsel.

Nov. 9—Proof of service filed by General Counsel.

1948

- Dec. 1—Certified copy of an order from 9th Circuit consolidating with Docket 15476 for the purpose of sending up a single record on review and original joint exhibits A-1, B-2 and respondent's exhibits C to I, inc., be transmitted in their original form and extending to Jan. 1, 1949, the time to prepare and transmit record filed.
- Dec. 3—Statement of points filed by General Counsel with statement of service thereon.
- Dec. 3—Designation of portions of record to be printed filed by General Counsel with statement of service thereon.
- Dec. 3—Designation of contents of record on review filed by General Counsel with statement of service thereon.
- Dec. 17—Proof of service of designation re printing, designation of record and statement of points filed. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

The Tax Court of the United States

Docket No. 15475

JOE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, symbols: IRA:ADC:90-D, dated May 14, 1947. As a basis of his proceeding, petitioner alleges as follows:

1. Petitioner is an individual having his principal office and place of business at 929 Market Street, San Francisco, California.

2. The notice of deficiency, a copy of which is attached hereto and marked Exhibit "A," was mailed petitioner on May 14, 1947. [3]

3. The tax in controversy is income tax of \$58,441.99 for the taxable year ended December 31, 1944, \$58,081.79 of which is in dispute.

4. The determination of tax set forth in said notice of deficiency is based upon the following error:

(a) Respondent has in error disallowed the deduction claimed in said year for amortization of bond premium in the amount of \$81,879.94.

5. The facts upon which petitioner relies as a basis of this proceeding are as follows:

(a) Petitioner, on June 21, 1944, purchased \$500,000.00 par value of American Telephone and Telegraph Company 3% Convertible Bonds of 1956 at a cost of \$601,879.94.

(b) Under the terms of the bond indenture these bonds were callable at \$104.00 at any time after August 31, 1944, on 30 days' notice.

(c) Petitioner wrote off the difference between such call price and cost or \$81,879.94 as amortization of part of the premium on these bonds and claimed same as a deduction for the year.

(d) Respondent disallowed the deduction claimed. [4]

Wherefore, petitioner prays that this Court may hear this proceeding and find as contended by petitioner:

That said amortization was allowable and should be allowed as a deduction.

/s/ WALTER J. RENZ,
Counsel for Petitioner. [5]

State of California,
City and County of San Francisco—ss.

Joe Shoong, being first duly sworn, deposes and says:

That he is an individual having his principal of-

office and place of business in the City and County of San Francisco, State of California;

That he has read all the statements contained in the foregoing petition addressed to The Tax Court of the United States.

And That all of the same are true and correct to the best of his knowledge and belief.

/s/ JOE SHOONG.

Subscribed and sworn to before me this 5th day of August, 1947.

[Seal] /s/ MARY A. TAPACHET,
Notary Public in and for the City and County of
San Francisco, State of California. [6]

EXHIBIT "A"

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco 5, California
Office of Internal Revenue Agent in Charge,
San Francisco Division
TRA:ADC:90-D May 14, 1947

Mr. Joe Shoong,
929 Market Street, San Francisco, Calif.

Dear Mr. Shoong:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1944, discloses a deficiency of \$58,441.99 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25 D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner.

By /s/ F. M. HARLESS,
Internal Revenue Agent in
Charge.

Enclosures: Statement, Form of waiver, Form 1276. [7]

Statement

Tax Liability for the Taxable Year ended
December 31, 1944

	Deficiency
Income Tax	\$58,441.99

In making this determination of your income tax liability, it is noted that you did not avail yourself of the privilege of filing a protest.

Adjustments to Net Income

Net income as disclosed by return page 4, line 3.....	\$ 6,770.82
Unallowable deductions and additional income:	
(a) Entertainment and travel expense.....	\$ 313.49
(b) Partnership income	50.53
(c) Contributions	50.00
(d) Bond amortization	81,879.94
	82,293.96
Net income as adjusted.....	\$89,064.78

Explanation of Adjustments

(a) For lack of full substantiation the deduction for entertainment and traveling expense is decreased by \$313.49 as follows:

Amounts claimed by your return:

Entertainment and traveling expense.....	\$2,089.50
Automobile expenses	337.48
	Total.....
	\$1,426.98
Amount allowed	1,800.00
	Decrease in deduction
	\$ 626.98
Your one-half community share.....	\$ 313.49

(b) Income from the partnership of Shoong

Realty Company, 929 Market Street, San Francisco, California, is increased by \$50.53 as follows:

Ordinary net income as disclosed by partnership return....\$1,606.75

Addition:

(1) Auto expense	252.65
Ordinary net income of partnership as adjusted.....	<u>\$1,859.40</u>
Your 20% distributive share.....	\$ 371.88
Amount reported on your return	<u>321.35</u>
Increase in income	<u>\$ 50.53</u>

(1) The deduction of \$252.65 claimed on the partnership return for automobile expense is disallowed for lack of substantiation.

(c) The amount of \$50.00 (your community one-half of \$100.00) claimed as a contribution to Wong Hoo Village Relief is disallowed since the organization is not an organization contributions to which are deductible for income tax purposes.

(d) You claimed a deduction of \$81,879.94 for amortization of bond premium as follows:

\$500,000.00 face value American Telephone and Telegraph 3%
Convertible Bonds of 1956

Cost	\$601,879.94
Call Price at \$104.00	<u>520,000.00</u>
Amortization	<u>\$ 81,879.94</u>

The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.

Computation of Tax

Net income	\$89,064.78	
Less: Surtax exemption	500.00	
	<hr/>	
Surtax net income	\$88,564.78	
	<hr/>	
Surtax on \$88,564.78		\$57,414.42
Net income	\$89,064.78	
Less: Normal tax exemption.....	500.00	
	<hr/>	
Normal tax net income.....	\$88,564.78	
	<hr/>	
Normal tax at 3% on \$88,564.78.....		2,656.94
		<hr/>
Correct income tax liability		\$60,071.36
Income tax disclosed by return, page 1, line 6:		
Original, Account No. 9087514, First Calif. District.....		1,629.37
		<hr/>
Deficiency of income tax		\$58,441.99
		<hr/>

[Endorsed]: T.C.U.S. Filed Aug. 11, 1947.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4 and 4(a). Denies that the Commissioner erred in the determination of the deficiency as alleged in paragraph 4 of the petition and subparagraph (a) thereunder.

5(a). Admits the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) Denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) and (d). Admits the allegations contained in subparagraphs (c) and (d) of paragraph 5 of the petition. [11]

6. Denies generally and specifically each and every allegations in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,
Special Attorney, Bureau of Internal
Revenue.

[Endorsed]: T.C.U.S. Filed Sept. 17, 1947. [12]

The Tax Court of the United States

Docket No. 15476

ROSE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, symbols IRA:ADC:90-D, dated May 14, 1947. As a basis of her proceeding, petitioner alleges as follows:

1. Petitioner is an individual having her principal office and place of business at 929 Market Street, San Francisco, California.

2. The notice of deficiency, a copy of which is attached hereto and marked Exhibit "A," was mailed petitioner on May 14, 1947. [13]

3. The tax in controversy is income tax of \$61,841.00 for the taxable year ended December 31, 1944, \$60,180.68 of which is in dispute.

4. The determination of tax set forth in said notice of deficiency is based upon the following error:

(a) Respondent has in error disallowed the de-

duction claimed in said year for amortization of bond premium in the amount of \$85,607.29.

5. The facts upon which petitioner relies as a basis of this proceeding are as follows:

(a) Petitioner, on June 26 and 27, 1944, purchased \$500,00.00 par value American Telephone and Telegraph Company 3% Convertible Bonds of 1956 at a cost of \$605,607.29.

(b) Under the terms of the bond indenture these bonds were callable at \$104.00 at any time after August 31, 1944, on 30 days' notice.

(c) Petitioner wrote off the difference between such call price and cost or \$85,607.29 as amortization of part of the premium on these bonds and claimed same as a deduction for the year.

(d) Respondent disallowed the deduction claimed. [14]

Wherefore, petitioner prays that this Court may hear this proceeding and find as contended by petitioner:

That said amortization was allowable and should be allowed as a deduction.

/s/ WALTER J. RENZ,

Counsel for Petitioner. [15]

State of California,
City and County of San Francisco—ss.

Rose Shoong, being first duly sworn, deposes and says:

That she is an individual having her principal

office and place of business in the City and County of San Francisco, State of California;

That she has read all the statements contained in the foregoing petition addressed to The Tax Court of the United States;

And That all of the same are true and correct to the best of her knowledge and belief.

/s/ ROSE SHOONG.

Subscribed and sworn to before me this 5th day of August, 1947.

[Seal] /s/ MARY A. TAPACHET,
Notary Public in and for the City and County of
San Francisco, State of California. [16]

EXHIBIT "A"

Treasury Department
Internal Revenue Service
74 New Montgomery Street,
San Francisco 5, California

Office of Internal Revenue Agent in Charge,
San Francisco Division

IRA:ADC:90-D

May 14, 1947

Mrs. Rose Shoong
929 Market Street, San Francisco, Calif.

Dear Mrs. Shoong:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1944, discloses a deficiency of \$61,841.00 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner.

By /s/ F. M. HARLESS,
Internal Revenue Agent in
Charge.

Enclosures: Statement, Form of waiver, Form 1276. [17]

Statement

Tax Liability for the Taxable Year ended
December 31, 1944

	Deficiency
Income Tax	\$61,841.00

In making this determination of your income tax liability, it is noted that you did not avail yourself of the privilege of filing a protest.

Adjustments to Net Income

Net income as disclosed by return, page 4, line 3.....	\$ 4,691.59	
Unallowable deductions and additional income:		
(a) Entertainment and travel expense	\$ 313.49	
(b) Depreciation	1,194.39	
(c) Partnership income	50.53	
(d) Contributions	50.00	
(e) Bond amortization	85,607.29	87,515.70
Net income as adjusted		\$92,207.29

Explanation of Adjustments

(a) For lack of full substantiation the deduction for entertainment and traveling expenses, claimed in connection with the salary earned by your husband, Mr. Joe Shoong, is decreased by \$313.49, as follows:

Amounts claimed on return:

Entertainment and traveling expense	\$2,089.50
Automobile expense	337.48
Total.....	\$2,426.98
Amount allowed	1,800.00
Decrease in deduction	\$ 626.98
Your one-half community share.....	\$ 313.49

(b) Deduction of \$1,494.39 was claimed for depreciation on property which you rented, under lease, to the Joe Shoong School for the nominal sum of \$12.00 per annum. The deduction is disallowed inasmuch as the property was neither used in a trade or business nor held for the production of income.

(c) Income from the partnership of Shoong Realty Company, 929 Market Street, San Francisco, Calif., is increased by \$50.53 as follows:

Ordinary net income as disclosed by partnership return.....	\$1,606.75
Addition: (1) Auto expense	252.65
<hr/>	
Ordinary net income of partnership as adjusted.....	\$1,859.40
<hr/>	
Your 20% distributive share.....	\$ 371.88
Amount reported on your return.....	321.35
<hr/>	
Increase in income	\$ 50.53
<hr/>	

(1) The deduction of \$252.65 claimed on the partnership return for automobile expense is disallowed for lack of substantiation.

(d) The amount of \$50.00 (your community one-half of \$100.00) claimed as a contribution to Wong Hoo Village Relief is disallowed since the organization is not an organization contributions to which are deductible for income tax purposes.

(e) You claim a deduction of \$85,607.29 for amortization of bond premium as follows:

\$500,000.00 face value American Telephone and Telegraph 3%
Convertible Bonds of 1956:

Cost	\$605,607.29
Call price at \$104.00	520,000.00
<hr/>	
Amortization	\$ 85,607.29
<hr/>	

The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.

Computation of Tax

Net income	\$92,207.29
Less: Surtax exemption	500.00
	<hr/>
Surtax net income	\$91,707.29
	<hr/>
Surtax on \$91,707.29	\$60,105.34
Net income	\$92,207.29
Less: Normal tax exemption.....	500.00
	<hr/>
Normal tax net income.....	\$91,707.29
	<hr/>
Normal tax at 3% on \$91,707.29.....	\$ 2,751.22
	<hr/>
Correct income tax liability.....	\$62,856.56
Income tax disclosed by return, page 1, line 6:	
Original, Account No. 9087515, First District of Calif.	1,015.56
	<hr/>
Deficiency of income tax	\$61,841.00
	<hr/>

[Endorsed]: T.C.U.S. Filed Aug. 11, 1947.

[Title of Tax Court and Cause No. 15476.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed

by the above-named petitioner, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4 and 4(a). Denies that the Commissioner erred in the determination of the deficiency as alleged in paragraph 4 of the petition and subparagraph (a) thereunder.

5(a). Admits the allegations contained in subparagraphs (a) of paragraph 5 of the petition.

(b). Denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) and (d). Admits the allegations contained in subparagraphs (c) and (d) of paragraph 5 of the petition. [21]

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,
Special Attorney, Bureau of Internal
Revenue.

[Endorsed]: T.C.U.S. Filed Sept. 17, 1947. [22]

The Tax Court of the United States

Docket No. 15475

JOE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 15476

ROSE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STIPULATION OF FACTS

It is hereby stipulated and agreed, by and between the parties hereto, by their respective counsel, that the following facts shall be taken as true in the above-entitled proceedings and received in evidence therein, subject to the right of either party to offer such additional evidence not inconsistent with or contrary to the matters herein stipulated.

1. Petitioners, Joe Shoong and Rose Shoong, are husband and wife, residing in Oakland, California. Petitioner, Joe Shoong, has an office at 929 Market Street, San Francisco, California. [23]

2. Petitioners filed separate returns for the calendar year 1944 with the Collector of Internal

Revenue for the First District of California on a community property basis.

3. Petitioner, Joe Shoong, on June 21, 1944, purchased American Telephone and Telegraph Company 15-year 3% convertible debenture bonds due September 1, 1956, as follows:

Amount	Basis	Cost	Commission	Accrued Interest	Total
250 M	120 $\frac{1}{8}$	\$300,312.50	\$ 625.00	\$2,333.33	\$303,270.83
250 M	120 $\frac{1}{8}$	300,312.50	625.00	2,333.33	303,270.83
<hr/>					
500 M		\$600,625.00	\$1,250.00	\$4,666.66	\$606,541.66

4. Petitioner, Joe Shoong, in his income tax return for 1944, reported adjusted gross income of \$104,304.58 and deductions of \$97,533.76, which latter amount included a claim of \$81,879.94 amortization of bond premium on American Telephone and Telegraph Company debenture bonds and reported a net income of \$6,770.82.

5. Petitioner, Rose Shoong, on June 26 and June 27, 1944, purchased American Telephone and Telegraph Company 15-year 3% convertible debenture bonds due September 1, 1956, as follows:

Amount	Basis	Cost	Commission	Accrued Interest	Total
Purchased 6/26/44—					
10 M	120 $\frac{1}{8}$	\$12,012.50	\$ 25.00	\$ 97.50	\$ 12,135.00
75 M	120 $\frac{1}{2}$	90,375.00	187.50	731.25	91,293.75
50 M	120 $\frac{1}{2}$	60,250.00	125.00	487.50	60,862.50
5 M	120 $\frac{1}{2}$	6,025.00	12.50	48.75	6,086.25
25 M	120 $\frac{1}{4}$	30,062.50	62.50	243.75	30,368.75
Purchased 6/27/44—					
50 M	120 $\frac{3}{4}$	60,375.00	125.00	491.67	60,991.67
2 M	120 $\frac{1}{2}$	2,410.00	5.00	19.67	2,434.67
78 M	120 $\frac{7}{8}$	94,282.50	195.00	767.00	95,244.50

Amount	Basis	Cost	Commission	Accrued Interest	Total
Purchased 6/27/1944—(Cont'd)					
50 M	1217 $\frac{7}{8}$	60,937.50	125.00	491.67	61,554.17
15 M	1217 $\frac{7}{8}$	18,281.25	37.50	147.50	18,466.25
100 M	121	121,000.00	250.00	983.33	122,233.33
10 M	121	12,100.00	25.00	98.33	12,223.33
2 M	1201 $\frac{1}{2}$	2,410.00	5.00	19.67	2,434.67
10 M	121	12,100.00	25.00	98.33	12,223.33
4 M	1201 $\frac{1}{2}$	4,820.00	10.00	39.33	4,869.33
2 M	1205 $\frac{5}{8}$	2,412.50	5.00	19.67	2,437.17
10 M	1203 $\frac{3}{4}$	12,075.00	25.00	98.33	12,198.33
2 M	121	2,420.00	5.00	19.67	2,444.67
<hr/>					
500 M		\$604,348.75	\$1,250.00	\$4,902.92	\$610,501.67

6. Petitioner, Rose Shoong, in her income tax return for 1944 reported adjusted gross income of \$100,927.43 and deductions of \$96,235.84, which latter figure included a claim of \$85,607.29 as amortization of bond premium on American Telephone and Telegraph Company bonds and reported a net income of \$4,691.59.

7. Petitioner, Joe Shoong, sold his American Telephone and Telegraph bonds as follows: [26]

Amount	Basis	Sold	Selling Price	Interest
22 M	124	1/ 8/45	\$ 27,280.00	\$ 236.50
100 M	1235 $\frac{5}{8}$	1/ 9/45	123,625.00	1,083.33
178 M	1233 $\frac{3}{8}$	1/10/45	219,607.50	1,943.16
200 M	1233 $\frac{3}{8}$	1/10/45	246,750.00	2,183.33
<hr/>				
500 M			\$617,262.50	\$5,446.32
<hr/>				
Commission		Tax	Insurance & Postage	Net
\$ 55.00		\$ 11.05	\$7.00	\$ 27,443.45
250.00				124,458.33
445.00		89.00		221,016.66
500.00		100.00		248,333.33
<hr/>				
\$(1,250.00)		\$(200.05)	\$(7.00)	\$621,251.77

8. Petitioner, Rose Shoong, sold her American Telephone and Telegraph bonds as follows:

Amount	Basis	Sold	Selling Price	Interest
17 M	123½	1-10-45	\$ 20,995.00	\$ 185.58
7 M	123¾	1-10-45	8,662.50	76.42
2 M	123½	1-10-45	2,470.00	21.83
74 M	123½	1-11-45	91,390.00	826.33
200 M	123½	1-11-45	247,000.00	2,233.33
1 M	123½	1-12-45	1,235.00	11.25
100 M	123	1-15-45	123,000.00	1,133.33
99 M	123	1-16-45	121,770.00	1,130.25
<hr/>			<hr/>	<hr/>
500 M			\$616,522.50	\$5,618.32

Commission	Tax	Net
\$ 42.50	\$ 8.92	\$ 21,129.16
17.50	3.50	8,717.92
5.00	1.00	2,485.83
185.00	37.00	91,994.33
500.00	100.00	248,633.33
5.00	.53	1,240.72
250.00	50.00	123,833.33
247.50	49.50	122,603.25
<hr/>	<hr/>	<hr/>
\$(1,252.50)	\$(250.45)	\$620,637.87

9. The aforesaid debenture bonds were issued under an indenture between American Telephone and Telegraph Company and City Bank and Farmers Trust Company as Trustee, dated September 1, 1941, a true and correct copy of which is attached hereto and made a part hereof, and marked Exhibit A-1.

10. The entire issue of the aforesaid debenture bonds was called under the provisions of Section 3.01, page 28-29 of the indenture (Exhibit A-1) for payment on September 1, 1947, at 104 plus interest.

11. The average price of the capital stock of the American Telephone and Telegraph Company on June 21, 1944, was 160½ per share; on June 26,

1944, 160½ per share; and on June 27, 1944, 160¾ per share.

12. The following is a schedule showing the price range of American Telephone and Telegraph convertible bonds and of American Telephone and Telegraph Company common stock from April 30, 1943, to August 29, 1947, inclusive:

Date	Bid and Ask or Last Sale of A.T.&T.		Stock Range		Excess in Sale Price of Stock Over Sale Price of Bonds
	Convertible Bonds		Low	High	
4/30/43	112½		147½	148½	34.75
6/ 4/43	114		155½	155¾	41.25
7/ 2/43	115		154¾	155¾	39.75
7/30/43	114¼		155¼	156	41.00
9/ 3/43	114¾		156¾	157½	42.00
10/ 1/43	116		156¼	156¾	40.25
10/29/43	115¾		156½	156¾	40.87
12/ 3/43	114½		155½	156	41.00
12/31/43	116¾		156½	156½	40.00
1/28/44	115¾		156¾	157	41.00
2/25/44	117		158¾	158¾	41.38
3/31/44	117½		157¾	157½	40.26
4/28/44	115¾		156¾	157¾	40.88
6/ 2/44	118¾		160¾	161	42.00
6/30/44	123½		162¾	163¾	39.13
7/28/44	122¼		163	163¼	40.75
9/ 1/44	122¼		163¾	164	41.50
9/29/44	121¾		161¾	162½	40.12
11/ 3/44	122¾		163¾	163¾	41.00
12/ 1/44	124		165¼	165¾	41.25
12/29/44	122¾		163	163¾	40.12
2/ 2/45	119¾		159½	161¼	40.12
3/ 2/45	121½		163½	163½	42.00
3/29/45	120¾		161½	161½	40.24
4/27/45	124½		165	165¾	40.50
6/ 1/45	130		171½	172¾	41.50
6/29/45	133¼		173¾	174¾	40.50
8/ 3/45	138¼		179	179¾	40.75

Date	Bid and Ask or Last Sale of A.T.&T. Convertible Bonds	Stock Range		Excess in Sale Price of Stock Over Sale Price of Bonds
		Low	High	
8/31/45	140 $\frac{1}{2}$	181 $\frac{3}{8}$	182 $\frac{3}{8}$	40.88
9/28/45	142	182 $\frac{1}{8}$	182 $\frac{3}{8}$	40.12
11/ 2/45	147	187 $\frac{1}{4}$	188 $\frac{1}{4}$	40.25
11/30/45	150	192	192 $\frac{1}{4}$	42.00
1/ 4/46	148	187 $\frac{7}{8}$	189	39.88
2/ 1/46	153 $\frac{1}{4}$	193 $\frac{7}{8}$	194 $\frac{5}{8}$	40.63
3/ 1/46	147 $\frac{1}{4}$	188	189	40.75
3/29/46	149 $\frac{1}{2}$	189 $\frac{3}{4}$	190 $\frac{1}{8}$	40.25
5/ 3/46	152 $\frac{1}{4}$	193	194 $\frac{1}{8}$	40.75
5/31/46	157 $\frac{1}{2}$	198 $\frac{1}{2}$	199 $\frac{5}{8}$	41.00
6/28/46	157 $\frac{1}{2}$	197 $\frac{3}{8}$	198	39.88
8/ 2/46	157	198	198 $\frac{1}{2}$	41.00
8/30/46	141	181 $\frac{1}{8}$	184 $\frac{7}{8}$	40.12
9/27/46	135 $\frac{1}{8}$	175	176	39.88
11/ 1/46	126 $\frac{1}{4}$	164 $\frac{1}{2}$	167 $\frac{1}{2}$	38.25
11/29/46	125	164 $\frac{1}{8}$	167	39.12
1/ 3/47	130 $\frac{1}{2}$	171	171 $\frac{1}{2}$	40.50
1/31/47	131-133 $\frac{1}{8}$	173	173 $\frac{3}{8}$	40.47
2/28/47	129-130 $\frac{1}{4}$	170 $\frac{1}{4}$	170 $\frac{3}{4}$	40.75
4/ 3/47	124 $\frac{7}{8}$	165	165 $\frac{3}{4}$	40.12
5/ 2/47	125	165 $\frac{3}{4}$	166 $\frac{1}{8}$	40.75
5/29/47	120-121	162 $\frac{7}{8}$	163 $\frac{7}{8}$	41.38
7/ 3/47	118	157	158 $\frac{3}{4}$	39.50
8/ 1/47	115 $\frac{3}{4}$	156 $\frac{3}{4}$	157	41.00
8/29/47	115 $\frac{1}{2}$	156 $\frac{1}{8}$	157 $\frac{7}{8}$	40.62

13. The following is a schedule of the price at which Consolidated Edison of New York, Inc., and Pacific Gas & Electric Co. (Cal.) nonconvertible bonds would sell, and did sell, compared with the selling price of American Telephone and Telegraph Company convertible bonds:

Date	A. T. & T.	Consolid'd Edison of New York, Inc.	Pacific Gas & Elec. Co. (Cal.) 1st and Ref. 3 $\frac{3}{4}$ H
		3 $\frac{1}{2}$ s. April 1, 1956 Debenture Bonds	Dec. 1, 1961
4/30/43	112 $\frac{1}{2}$	105 $\frac{3}{4}$ -105 $\frac{7}{8}$	111 $\frac{1}{2}$ -112
6/ 4/43	114	105 $\frac{3}{4}$	111
7/ 2/43	115		
7/30/43	114 $\frac{1}{4}$	107 -107	112 $\frac{1}{8}$ -112 $\frac{7}{8}$
9/ 3/43	114 $\frac{3}{4}$	108	110 $\frac{1}{2}$ -111
10/ 1/43	116	108	110 -110 $\frac{1}{4}$
10/29/43	115 $\frac{7}{8}$	108 $\frac{1}{4}$ -108 $\frac{1}{4}$	110 $\frac{5}{8}$
12/ 3/43	114 $\frac{1}{2}$	105 $\frac{1}{4}$	110 -110 $\frac{1}{2}$
12/31/43	116 $\frac{1}{4}$	105 $\frac{3}{8}$ -106	111 $\frac{1}{8}$
1/28/44	115 $\frac{7}{8}$	106 $\frac{3}{4}$	110 $\frac{3}{4}$
2/25/44	117	106 $\frac{1}{2}$ -106 $\frac{3}{4}$	110 $\frac{3}{4}$
3/31/44	117 $\frac{1}{8}$	106 $\frac{3}{4}$	110 $\frac{1}{2}$
4/28/44	115 $\frac{3}{4}$	106 $\frac{3}{4}$ -107 $\frac{1}{4}$	110 $\frac{3}{4}$
6/ 2/44	118 $\frac{5}{8}$	107 $\frac{1}{2}$	110 -110 $\frac{3}{8}$
6/30/44	123 $\frac{1}{2}$	107 $\frac{1}{2}$	110 $\frac{1}{2}$
7/28/44	122 $\frac{1}{4}$	105 $\frac{3}{4}$ -105 $\frac{3}{4}$	110 $\frac{1}{4}$
9/ 1/44	122 $\frac{1}{4}$	103 $\frac{3}{4}$ -103 $\frac{7}{8}$	109 $\frac{3}{4}$ -110 $\frac{1}{4}$
9/29/44	121 $\frac{5}{8}$	104	108 $\frac{1}{2}$
11/ 3/44	122 $\frac{5}{8}$	104 $\frac{3}{8}$ -105	107 $\frac{7}{8}$ -107 $\frac{7}{8}$
12/ 1/44	124	103 $\frac{1}{4}$	Ret/Jan 1/1945
12/29/44	122 $\frac{7}{8}$	103 $\frac{1}{4}$	
2/ 2/45	119 $\frac{3}{8}$	104	
3/ 2/45	121 $\frac{1}{8}$	104 $\frac{1}{8}$	
3/29/45	120 $\frac{7}{8}$	103 $\frac{7}{8}$	
4/27/45	124 $\frac{1}{2}$	104 $\frac{5}{8}$	
6/ 1/45	130	103 $\frac{1}{2}$	
6/29/45	133 $\frac{1}{4}$	102 $\frac{7}{8}$	
8/ 3/45	138 $\frac{1}{4}$	102 $\frac{1}{2}$ -102 $\frac{1}{2}$	
8/31/45	140 $\frac{1}{2}$	102 $\frac{7}{8}$ -105	
9/28/45	142	104 $\frac{1}{8}$	
11/ 2/45	147	103	
11/30/45	150	102 $\frac{1}{2}$ -102 $\frac{3}{4}$	
1/ 4/46	148	103 $\frac{1}{2}$	
2/ 1/46	153 $\frac{1}{4}$	103 $\frac{1}{2}$ -104	
3/ 1/46	117 $\frac{1}{4}$	102	
3/29/46	149 $\frac{1}{2}$	102 $\frac{3}{8}$	
5/ 3/46	152 $\frac{1}{4}$	102	
5/31/46	157 $\frac{1}{2}$	102 $\frac{1}{2}$	
6/28/46	157 $\frac{1}{2}$	101 $\frac{3}{4}$ -102	

Date	A. T. & T.	Consolid'd Edison of New York, Inc.	Pacific Gas & Elec. Co. (Cal.) 1st and Ref. 3¾ H
		Debenture Bonds 3½s, April 1, 1956	Dec. 1, 1961
8/ 2/46	157	101¾	
8/30/46	141	102½-102½	
9/27/46	135⅛	102¾	
11/ 1/46	126¼	102 -102½	
11/29/46	125	102	
1/ 3/47	130½	102 -102¾	
1/31/47	131⅛-133	103	
2/28/47	129-130¼	102	
4/ 3/47	124⅞	103⅛	
5/ 2/47	125	102	
5/29/47	120-121	102-102	
7/ 3/47	118	July 18 '7 at 101½	
8/ 1/47	115¾		
8/29/47	115½		

14. Standard and Poor's Monthly Bond Yield Index Public Utility Bonds Rated A-1 monthly averages are shown by the following schedule:

	1941	1942	1943	1944	1945	1946	1947
January	2.901	2.859	2.793	2.725	2.679	2.644	2.588
February	2.901	2.898	2.763	2.728	2.653	2.635	2.605
March	2.867	2.919	2.752	2.731	2.634	2.646	2.619
April	2.877	2.896	2.750	2.716	2.649	2.634	2.583
May	2.847	2.914	2.753	2.701	2.670	2.621	2.588
June	2.794	2.920	2.726	2.713	2.662	2.632	2.591
July	2.764	2.878	2.684	2.713	2.663	2.636	2.600
August	2.790	2.852	2.679	2.688	2.663	2.653	2,595
September	2.777	2.831	2.687	2.684	2.698	2.665	2.635
October	2.713	2.819	2.686	2.704	2.694	2.711	2.733
November	2.702	2.788	2.718	2.730	2.708	2.726	2.789
December	2.812	2.805	2.751	2.705	2.679	2.653	2.925

15. The following is the list of bonds used in the bond yield index schedule set out in the preceding Paragraph 14:

Utilities A-1

Columbus & So. Ohio Elec. $3\frac{1}{4}$ s, 1970

Consumer Power $3\frac{1}{4}$ s, 1969

Detroit Edison 3s, 1970

Ohio Power Co. 3s, 1971

Pacific Gas & Elec. 3s, 1970

Panhandle East. Pipe Line 3s, 1960

So. California Edison 3s, 1965

Southern Counties Gas 3s, 1971

So. West. Gas & Elec. $3\frac{1}{4}$ s, 1970

Union Elec. of Missouri $3\frac{3}{8}$ s, 1971

16. Either party herein. in support of their contentions, may quote from and refer in their briefs to Moody's; Standard and Poor's; Commercial and Financial Chronicle Services for bond ratings, bond yields, and comparable selling prices of bonds and stocks; and may also quote from and refer to Dewing, *Financial Policy of Corporations* (3d rev. ed., 1937); Badger & Guthman, *Investment Principles and Practices* (3d ed., 1941); R. E. Badger, *Valuation of Industrial Securities* (1925); [35] and Investment Securities Regulations issued by the Comptroller of the Currency, 12 CFR, Cum. Sup. 1.2(f).

17. The bonds purchased by petitioners, Joe Shoong and Rose Shoong, were not part of the stock in trade of the petitioners, or includible in any inventory of the petitioners at the close of the taxable years, or held by the petitioners primarily for sale to customers in the ordinary course of their trade or business. Petitioners did not, during the

calendar year 1944, sell any of the bonds purchased by them, as aforesaid, nor did they exercise their privilege of converting said bonds into capital stock of the company.

18. It is further agreed that either party may offer and have received in evidence petitioner's Federal income tax returns for the years 1944 and 1945; and a copy of the prospectus dated June 19, 1947, relating to the American Telephone and Telegraph Company 15-year 3% convertible debenture bonds of 1956, and a specimen copy of a \$100 definitive debenture bond issued in accordance with the prospectus.

19. In the deficiency notice the Commissioner determined for the year 1944 with respect to petitioner Joe Shoong, as follows: [36]

“(d) You claimed a deduction of \$81,879.94 for amortization of bond premium as follows:

\$500,000.00 face value American Telephone and Telegraph 3% Convertible Bonds of 1956

Cost	\$601,879.94
Call Price at \$104.00.....	520,000.00

Amortization	\$ 81,879.94
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The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.”

20. In the deficiency notice the Commissioner determined for the year 1944 with respect to petitioner Rose Shoong, as follows:

“(e) You claim a deduction of \$85,607.29 for amortization of bond premium as follows:

\$500,000.00 face value American Telephone and Telegraph 3% Convertible Bonds of 1956	
Cost	\$605,607.29
Call price at \$104.00.....	520,000.00
<hr/>	
Amortization	\$ 85,607.29

The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.” [37]

21. Petitioners, in reliance upon information that they would be entitled to claim in the year 1944 a deduction for amortization of the amount by which the cost exceeded the call price, purchased the aforesaid bonds with the intention of making such a claim for a deduction for amortization and of selling said bonds after holding them for more than six months so that the gain, if any, upon the

sale would be subject to tax as long-term capital gain.

/s/ W. J. RENZ,

/s/ PETER S. SOMMER,

Counsel for Petitioners.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

[Endorsed]: T.C.U.S. Filed Sept. 17, 1947. [38]

The Tax Court of the United States

Docket Nos. 15475, 15476

Joe Shoong, Petitioner, v. Commissioner of Internal Revenue, Respondent. Rose Shoong, Petitioner, v. Commissioner of Internal Revenue, Respondent.

Walter J. Renz, C.P.A., for the petitioners.

B. H. Neblett, Esq., for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

Kern, Judge: These two proceedings were consolidated for hearing and opinion. In Docket No. 15475, the respondent determined a deficiency in income tax for the year 1944 in the sum of \$58,-441.99; in Docket No. 15476 he determined a deficiency in income tax for the year 1944 in the sum of \$61,841. In each of these proceedings practically the entire amount of the deficiency determined resulted in the respondent's disallowance of deductions on account of amortizable bond premiums taken by each petitioner in connection with the purchase, [39] during the taxable year, of Ameri-

can Telephone & Telegraph Co. debenture bonds. The only issue presented for our decision in each case is whether respondent erred in disallowing this deduction.

A stipulation of facts was filed at the hearing which we incorporate herein by reference, including the exhibits thereto attached. At the hearing certain other exhibits were introduced in evidence which we also incorporate herein by reference. The pertinent facts are as follows:

Petitioners are husband and wife and reside in Oakland, California. They filed separate returns for the taxable year with the collector of internal revenue for the first district of California on a community property basis.

On June 21, 1944, petitioner, Joe Shoong, purchased American Telephone & Telegraph Co. 15-year 3% convertible debenture bonds due September 1, 1956, as follows:

Face Amount—\$500,000.

Basis—120⅛.

Cost—\$600,625.

Commission—\$1,250.

Accrued Interest—\$4,666.66.

Total—\$606,541.66.

In his income tax return for 1944 he reported adjusted gross income of \$104,304.58, and deductions of \$97,533.76, which latter amount included a claim of \$81,879.94 amortization of bond premium on American Telephone & Telegraph Co. debenture bonds. The net income reported by petitioner, Joe Shoong, for the taxable year was \$6,770.82.

On June 26 and 27, 1944, petitioner, Rose Shoong, purchased at prices ranging from $120\frac{1}{8}$ to $121\frac{7}{8}$, American Telephone & Telegraph [40] Co. 15-year 3% convertible debenture bonds due September 1, 1956, as follows:

Face Amount—\$500,000.

Cost—\$604,348.75.

Commission—\$1,250.

Accrued Interest—\$4,902.92.

Total—\$610,501.67.

In her income tax return for 1944 petitioner, Rose Shoong, reported adjusted gross income of \$100,927.43, and deductions of \$96,235.84, which latter figure included a claim of \$85,607.29 as amortization of bond premiums on American Telephone & Telegraph Co. bonds. She reported a net income for the taxable year of \$4,691.59.

On January 8, 9, and 10, 1945, petitioner, Joe Shoong, sold, at prices ranging from $123\frac{3}{8}$ to 124, his American Telephone & Telegraph Co. debenture bonds, as follows:

Face Amount—\$500,000.

Selling Price—\$617,262.50.

Interest—\$5,446.32.

Commission—(\$1,250).

Tax—(\$200.05).

Ins. & Postage—(\$7.00).

Net—\$621,251.77.

On January 10, 11, 12, 15, and 16, 1945, petitioner, Rose Shoong, sold, at prices ranging from

123 to 123¾, her American Telephone & Telegraph Co. debenture bonds, as follows:

Face Amount—\$500,000.

Selling Price—\$616,522.50.

Interest—\$5,618.32.

Commission—(\$1,252.50).

Tax—(\$250.45).

Net—\$620,637.87.

These debenture bonds were issued under an indenture by the American Telephone & Telegraph Co. and City Bank and Farmers Trust Co., as trustee, dated September 1, 1941. This indenture provided that, at any time between January 1, 1942, and December 31, 1954, unless previously called for redemption, the debenture bonds were convertible into the [41] capital stock of the company at a conversion price of \$140 per share, payable by surrender of \$100 principal amount of debenture bonds and payment to the company of \$40 in cash for each share of capital stock to be issued upon conversion. It also provided that the company should have the option to redeem all or part of the bonds after September 1, 1942. The redemption price to and including August 31, 1944, was to be \$107, plus accrued interest, and from August 31, 1944, to and including August 31, 1948, was to be \$104, plus accrued interest.

The entire issue of the debenture bonds was called for redemption on September 1, 1947, at \$104, plus interest.

The average price of the capital stock of the American Telephone & Telegraph Co. on June 21, 1944, was 160½ per share; on June 26, 1944, 160½ per share; and on June 27, 1944, 160¾ per share.

The price range of these debenture bonds from April 30, 1943, to August 29, 1947, was from 112½ to 157½. The price range of the common stock of the American Telephone & Telegraph Co. during the same period was from 147¼ to 199⅝. During the same period the excess in the sale price of the debenture bonds ranged from \$34.75 to \$42.00.

During the period April 30, 1943, to November 3, 1944, the selling price of Pacific Gas & Electric Co. (Cal.) First Ref. 3¾s bonds ranged from 107⅞ to 112⅞. During the period April 30, 1943, to July 3, 1947, the selling price of Consolidated Edison of N. Y., Inc., debenture bonds 3½s, due April 1, 1956, ranged from 101½ to 108¼. Standard and Poor's Monthly Bond Yield Index Public Utility [42] Bonds Rated A-1 monthly averages during the years 1941 to 1947, inclusive, ranged from 2.583 to 2.925.

The bonds purchased by petitioners, Joe Shoong and Rose Shoong, were not part of the stock in trade of the petitioners, or includible in any inventory of the petitioners at the close of the taxable year, or held by the petitioners primarily for sale to customers in the ordinary course of their trade or business. Petitioners did not, during the calendar year 1944, sell any of the bonds purchased by them, nor did they exercise their privilege of con-

verting these bonds into capital stock of the company.

In each deficiency notice respondent explained his disallowance of the deduction for amortization of bond premium as follows:

The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.

Petitioner, in reliance upon information that they would be entitled to claim, in the year 1944, a deduction for amortization of the amount by which the cost exceeded the call price, purchased the bonds with the intention of making such a claim for a deduction for amortization and of selling the bonds after holding them for more than six months so that the gain, if any, upon the sale would be subject to tax as long-term capital gain.

The principal issue presented for our decision in these cases has recently been decided by this Court in the case of *Christian W. [43] Korell*, 10 T. C. (Promulgated June 2, 1948). On the authority of this case we decide in favor of the petitioners.

On brief respondent contends for the first time that the commissions paid by the petitioners "are a part of the cost of the securities and are not deductible in any event as ordinary and necessary business expenses." Respondent does not elabo-

rate this contention except by citing three cases including *Helvering v. Winnill*, 305 U. S. 79 and *Spreckels v. Helvering*, 315 U. S. 626. Petitioner correctly points out in reply that there is no question here presented as to whether these commissions should be capitalized or treated as expenses, but, rather, the question is whether, in the amortization of premiums, the commissions paid are to be treated as part of the purchase price. That such a treatment is proper, is recognized by respondent's Regulations 111, section 29.125-6.

Since other minor adjustments not here in issue have been made in petitioner's income taxes for the taxable year.

Decision will be entered under Rule 50. [44]

The Tax Court of the United States
Washington

Docket No. 15475

JOE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Court's Memorandum Findings of Fact and Opinion, entered June 14, 1948, the respondent filed a computation of tax on July 15,

1948. The petitioner filed an acquiescence in said computation, on July 27, 1948, now therefore, it is

Ordered and Decided: That there is a deficiency in income tax of \$136.63 for the calendar year 1944.

Entered: August 9, 1948.

[Seal] /s/ JOHN W. KERN,
Judge. [45]

The Tax Court of the United States
Washington

Docket No. 15476

ROSE SHOONG,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Court's Memorandum Findings of Fact and Opinion, entered June 14, 1948, the respondent filed a computation of tax on July 15, 1948. The petitioner filed an acquiescence in said computation, on July 27, 1948, now, therefore, it is

Ordered and Decided: That there is a deficiency in income tax of \$557.44 for the calendar year 1944.

Entered: August 9, 1948.

[Seal] /s/ JOHN W. KERN,
Judge. [46]

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 15475

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

JOE SHOONG,

Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on August 9, 1948, ordering and deciding that there is a deficiency in income tax of \$136.63 for the calendar year 1944. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Joe Shoong, filed his individual income tax return for the calendar year 1944 with the Collector of Internal Revenue for the First District of California at San Francisco, California, whose office is within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, wherein this review is sought.

NATURE OF CONTROVERSY

The issue is whether taxpayer is entitled to the deduction claimed for the year 1944 for amortiza-

tion of bond premium representing the [47] excess of the amount of the basis of certain American Telephone & Telegraph Co. 15-year 3% convertible debenture bonds over the amount payable on call date prior to maturity.

In his return for the year 1944, taxpayer deducted \$81,879.94, the difference between the purchase price and the call price or maturity price on the theory that the bond could have been called in that year, and in such event the entire premium would have been lost. In determining the deficiency for the year 1944, the Commissioner determined that no part of the bond premium was deductible under Sections 23(v) and 125 of the Internal Revenue Code as amortization of the premium over the call or maturity price of the bond for the reason that the excess of the purchase price over par represented the market value of the conversion option and was not a true bond premium. However, the Tax Court concluded that the bond premium was amortizable in full in 1944 under Sections 23(v) and 125 of the Internal Revenue Code notwithstanding that the premium may have been due entirely to the accompanying privilege to buy into obligor's stock at a price below the current market.

/s/ THERON L. CAUDLE,

Assistant Attorney General.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

[Endorsed]: T.C.U.S. Filed Oct. 25, 1948. [48]

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: Walter J. Renz, C.P.A., 630 Russ Building,
San Francisco 4, California

You are hereby notified that the Commissioner of Internal Revenue did, on the 25th day of October, 1948, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 25th day of October, 1948.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Nov. 9, 1948. [49]

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: Mr. Joe Shoong, 929 Market Street, San Francisco, California

You are hereby notified that the Commissioner of Internal Revenue did, on the 25th day of October, 1948, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 25th day of October, 1948.

/s/ CHARLES OLIPHANT.

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Nov. 9, 1948. [50]

[Title of U. S. Court of Appeals and Cause.]

PETITION FOR REVIEW

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on August 9, 1948, ordering and deciding that there is a deficiency in income tax of \$557.44 for the calendar year 1944. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Rose Shoong, filed her individual income tax return for the calendar year 1944 with the Collector of Internal Revenue for the First District of California at San Francisco, California, whose office is within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, wherein this review is sought.

NATURE OF CONTROVERSY

The issue is whether taxpayer is entitled to the deduction claimed for the year 1944 for amortization of bond premium representing the [51] excess of the amount of the basis of certain American Telephone & Telegraph Co. 15-year 3% convertible debenture bonds over the amount payable on call date prior to maturity.

In her return for the year 1944, taxpayer de-

ducted \$85,607.29, the difference between the purchase price and the call price or maturity price on the theory that the bond could have been called in that year, and in such event the entire premium would have been lost. In determining the deficiency for the year 1944, the Commissioner determined that no part of the bond premium was deductible under Sections 23(v) and 125 of the Internal Revenue Code as amortization of the premium over the call or maturity price of the bond for the reason that the excess of the purchase price over par represented the market value of the conversion option and was not a true bond premium. However, the Tax Court concluded that the bond premium was amortizable in full in 1944 under Sections 23(v) and 125 of the Internal Revenue Code notwithstanding that the premium may have been due entirely to the accompanying privilege to buy into obligor's stock at a price below the current market.

/s/ THERON L. CAUDLE,

Assistant Attorney General.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

[Endorsed]: T.C.U.S. Filed Oct. 25, 1948. [52]

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: Mrs. Rose Shoong, 929 Market Street, San
Francisco, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 25th day of October, 1948, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 25th day of October, 1948.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Coun-
sel for Petitioner on Review.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Nov. 9, 1948. [53]

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: Walter J. Renz, C.P.A., 630 Russ Building,
San Francisco 4, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 25th day of October, 1948, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 25th day of October, 1948.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel
for Petitioner on Review.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Nov. 9, 1948. [54]

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS

Now Comes the Commissioner of Internal Revenue, the petitioner on review herein, by his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby asserts the follow-

ing errors on which he intends to rely in this review:

That the Tax Court of the United States erred:

1. In holding and deciding that the premiums paid for bonds callable for redemption on 30 days' notice is amortizable in full in year of acquisition under Sections 23(v) and 125 of the Internal Revenue Code, notwithstanding the premium may have been due entirely to accompanying privilege of converting into obligor's stock at a price below current market value.

2. In holding and deciding on the authority of its decision in *Christian W. Korell*, June 2, 1948, 10 T. C. (No. 128) that the phrase in Sec. 29.125-5 of Regulations 111 "on a date certain specified in the bond" is a gratuitous addition by the Commissioner not founded upon the statutory language and is directly in conflict with its legislative history. [55]

3. In failing to reject the petitioner's claim for amortization of bond premiums because they were not true bond premiums within the intendment of the Statute and Regulations, such as would normally be amortized out of gross interest earnings in order to exclude capital recovered under the guise of interest.

4. In failing to hold that the deduction is not within the intendment of the Statute and Regulations, for the reason that the purchase of the bonds, the deduction of the bond premiums in full and the

sale of the bonds shortly after capital gain rates became applicable, were all parts of a plan of tax avoidance.

5. In failing to hold and decide that no part of the so-called premium on the 15-year 3% convertible debenture bonds of the American Telephone and Telegraph Co. was deductible in the year 1944 under Sections 23(v) and 125 of the Internal Revenue Code as amortization of the premium over the call price for the reason that the excess of the purchase price over par represented the market value of the conversion option and was not a true bond premium.

6. In entering its decision where in it ordered and decided that there is a deficiency of \$136.63 in income tax for the year 1944.

7. In that its decision is not supported by the evidence.

8. In that its decision is contrary to law and regulations.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

(Statement of Service attached.)

[Endorsed]: T.C.U.S. Filed Dec. 3, 1948. [56]

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS

Now Comes the Commissioner of Internal Revenue, the petitioner on review herein, by his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby asserts the following errors on which he intends to rely in this review:

That the Tax Court of the United States erred:

1. In holding and deciding that the premiums paid for bonds callable for redemption on 30 days' notice is amortizable in full in year of acquisition under Sections 23(v) and 125 of the Internal Revenue Code, notwithstanding the premium may have been due entirely to accompanying privilege of converting into obligor's stock at a price below current market value.

2. In holding and deciding on the authority of its decision in *Christian W. Korell*, June 2, 1948, 10 T. C. (No. 128) that the phrase in Sec. 29.125-5 of Regulations 111 "on a date certain specified in the bond" is a gratuitous addition by the Commissioner not founded upon the statutory language and is directly in conflict with its legislative history. [57]

3. In failing to reject the petitioner's claim for amortization of bond premiums because they were not true bond premiums within the intendment of the Statute and Regulations, such as would normally be amortized out of gross interest earnings

in order to exclude capital recovered under the guise of interest.

4. In failing to hold that the deduction is not within the intendment of the Statute and Regulations, for the reason that the purchase of the bonds, the deduction of the bond premiums in full and the sale of the bonds shortly after capital gain rates became applicable, were all parts of a plan of tax avoidance.

5. In failing to hold and decide that no part of the so-called premium on the 15-year 3% convertible debenture bonds of the American Telephone and Telegraph Co. was deductible in the year 1944 under Sections 23(v) and 125 of the Internal Revenue Code as amortization of the premium over the call price for the reason that the excess of the purchase price over par represented the market value of the conversion option and was not a true bond premium.

6. In entering its decision wherein it ordered and decided that there is a deficiency of \$557.44 in income tax for the year 1944.

7. In that its decision is not supported by the evidence.

8. In that its decision is contrary to law and regulations.

/s/ THERON L. CAUDLE.

Assistant Attorney General.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

(Statement of Service attached.)

[Endorsed]: T.C.U.S. Filed Dec. 3, 1948. [58]

[Title of U. S. Court of Appeals and Causes 15475-6]

PETITIONER'S DESIGNATION OF THE
PORTION OF THE RECORD TO
BE PRINTED

To the Clerk of the United States Court of Appeals
for the Ninth Circuit:

Comes now the Commissioner of Internal Revenue, the petitioner on review herein, by his counsel of record, and complying with the rules of this Court pertaining to designation of the portions of the record to be printed, states that he relies upon the entire record as certified by the Clerk of The Tax Court of the United States and directs that the following portions of the record so certified be printed as the record on review:

1. Docket entries of all proceedings before The Tax Court of the United States in Dockets Nos. 15475 and 15476.

2. Pleadings: (a) Petitions, together with attached Exhibits A (notices and statement of deficiency). (b) Answers. [59]

3. Stipulation of facts, omitting Exhibit A-1 referred to therein, being joint exhibit A-1 in item 6.

4. Memorandum Findings of Fact, Opinion and Decision.

5. Petitions for review.

6. Order of the Ninth Circuit Re: Consolida-

tion of the two causes and the transmission of the original Joint Exhibits A-1 and B-2 and Respondent's Exhibits C to I, inclusive, introduced in evidence at the hearing before the Tax Court.

7. Statements of points to be relied upon by the Commissioner.

8. Designation of the record, proceedings, and evidence to be contained in the record on review.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

(Statement of Service attached.)

[Endorsed]: T.C.U.S. Filed Dec. 3, 1948. [60]

[Title of U. S. Court of Appeals and Causes 15475-6]

ORDER

Upon Motion, It Is Ordered:

1. That the above-captioned causes be and they are hereby consolidated for briefing, hearing, argument and decision:

2. That the Clerk of the Tax Court of the United States certify and transmit to this Court a single consolidated transcript of record on review in the above-captioned causes:

3. That the original exhibits received in evi-

dence in the above-captioned causes, consisting of Joint Exhibits A-1 and B-2, and Respondent's Exhibits C to I, inclusive, instead of being fully set forth in the transcript of the record to be certified by the Clerk of the Tax Court to the Clerk of this Court, may be transmitted by the Clerk of the Tax Court to the Clerk of this Court. [61]

4. That said exhibits need not be printed in the record on review herein but may be referred to by counsel in their respective briefs and on oral argument, or reproduced, in whole or in part, in an appendix to their respective briefs, and considered by the Court with the same force and effect as if included in the printed record on review:

5. That the time within which to file the record on review in the above-captioned causes with this Court be, and the same is, extended to and including January 1, 1949. W.D.

6. That the Clerk of this Court transmit a certified copy of this order to the Clerk of The Tax Court of the United States, Washington 25, D. C., to be by him incorporated in the transcript of the record on review herein.

Done at San Francisco, California, this 26th day of November, A.D. 1948.

[Seal]

WILLIAM DENMAN,

United States Circuit Judge.

[Endorsed]: Filed November 26, 1948. Paul P. O'Brien, Clerk.

[Endorsed]: T.C.U.S. Filed Dec. 1, 1948. [62]

[Title of U. S. Court of Appeals and Cause 15475-6.]

DESIGNATION OF CONTENTS OF RECORD ON REVIEW

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Court of Appeals for the Ninth Circuit copies duly certified as correct of the following documents and records relating to the petitions for review heretofore filed by the Commissioner of Internal Revenue in the above-captioned causes:

1. Docket entries of all proceedings before the Tax Court in Docket Nos. 15475 and 15476.

2. Pleadings: (a) Petitions, together with attached Exhibit A (notice and statement of deficiency). (b) Answers.

3. Stipulation of facts.

4. Memorandum Findings of Fact and Opinion.

5. Decisions. [63]

6. Petitions for review, together with proofs of service of notice of filing and of service of a copy of each petition for review.

7. Order of the United States Court of Appeals for the Ninth Circuit directing the consolidation of the two causes and transmission of the original exhibits, viz.: Joint Exhibits A-1 and B-2 and Respondent's Exhibits C to I, inclusive, received in evidence at the hearing before the Tax Court.

8. Statements of Points to be relied upon by the Commissioner.

9. All orders made by the Court with respect to enlargement of time for the preparation and transmission of the certified transcript of the record on review.

10. Designation of the portions of the record on review to be printed.

11. This designation of contents of the record on review.

Said transcript is to be prepared, certified, and transmitted as required by law and the rules of the United States Court of Appeals for the Ninth Circuit.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

[Endorsed]: T.C.U.S. Filed Dec. 3, 1948. [64]

[Title of Tax Court and Causes 15475-6.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 64, inclusive, contain and are a true copy of the transcript of record, papers, and

proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 17th day of December, 1948.

[Seal] /s/ VICTOR S. MERSCH,
Clerk, The Tax Court of the
United States.

[Endorsed]: No. 12136. United States Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Joe Shoong, Respondent. Commissioner of Internal Revenue, Petitioner, vs. Rose Shoong, Respondent. Transcript of the Record. Petitions to Review Decisions of The Tax Court of the United States.

Filed: December 21, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

JOE SHOONG, RESPONDENT

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ROSE SHOONG, RESPONDENT

ON PETITIONS FOR REVIEW OF THE DECISIONS OF THE TAX
COURT OF THE UNITED STATES

BRIEF FOR THE PETITIONER

THERON LAMAR CAUDLE,

Assistant Attorney General.

ELLIS N. SLACK,

ROBERT N. ANDERSON,

FRED E. YOUNGMAN,

Special Assistants to the Attorney General.

FILED

MAR 14 1949

PAUL P. O'BRIEN,

CLERK

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**In the United States Court of Appeals
for the Ninth Circuit**

No. 12,136

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

JOE SHOONG, RESPONDENT

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ROSE SHOONG, RESPONDENT

*ON PETITIONS FOR REVIEW OF THE DECISIONS OF THE TAX
COURT OF THE UNITED STATES*

BRIEF FOR THE PETITIONER

OPINION BELOW

The unreported memorandum findings of fact and opinion of the Tax Court are printed in the record at pages 31 to 37, inclusive.

JURISDICTION

These appeals involve deficiencies in Federal income tax for the year 1944 asserted against Joe Shoong and Rose Shoong (hereinafter sometimes referred to as the

taxpayers), in the respective amounts of \$58,441.99 and \$61,841, practically the entire amount of which in each case resulted from the Commissioner's disallowance of deductions claimed by the taxpayers as amortizable bond premium. (R. 31.) The taxpayers are husband and wife residing at Oakland, California. They filed separate income tax returns for the calendar year 1944 with the Collector of Internal Revenue for the First District of California on a community property basis. (R. 32.) Under date of May 14, 1947, the Commissioner of Internal Revenue duly mailed to each a statutory notice of deficiency pursuant to Section 272 of the Internal Revenue Code. (R. 6-10, 14-18.) A petition for review of the Commissioner's determination was filed with the Tax Court by each taxpayer on August 11, 1947. (R. 4-6, 12-14.) On August 9, 1948, the Tax Court entered its decision in each case, reducing the deficiency in the case of Joe Shoong to \$136.63 and in the case of Rose Shoong to \$557.44. (R. 37-38.) The cases are brought to this Court by petitions for review filed by the Commissioner of Internal Revenue under date of October 25, 1948. (R. 39-40, 43-44.) The jurisdiction of this Court is invoked under Section 1141 (a) of the Internal Revenue Code, as amended by Section 36 of the Act of June 25, 1948.

QUESTION PRESENTED

The only question presented in each of these cases is whether, under the facts, the Tax Court erred in allowing as deductions from gross income for the taxable year involved, under Sections 23 (v) and 125 of the Internal Revenue Code, the excess of the amount of the basis (here cost) of certain American Telephone & Telegraph Company 15-year, three per cent convertible debenture bonds over the amount payable on call date prior to maturity.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the applicable statute and Regulations involved are printed in the Appendix, *infra*.

STATEMENT

These cases were submitted to the Tax Court on a stipulation of facts and exhibits attached thereto (R. 20-31), plus certain other exhibits which were filed at the hearing before the Tax Court (R. 32). The material facts were summarized by the Tax Court as follows:

On June 21, 1944, taxpayer Joe Shoong, purchased American Telephone & Telegraph Company 15-year three per cent convertible debenture bonds due September 1, 1956, as follows (R. 32):

Face Amount—	\$500,000
Basis—	120 $\frac{1}{8}$
Cost—	\$600,625
Commission—	\$1,250
Accrued Interest—	\$4,666.66
Total—	\$606,541.66

In his income tax return for 1944 he reported adjusted gross income of \$104,304.58, and deductions of \$97,533.76, which latter amount included a claim of \$81,879.94 amortization of bond premium on American Telephone & Telegraph Company debenture bonds. The net income reported by taxpayer Joe Shoong for the taxable year was \$6,770.82. (R. 32.)

On June 26 and 27, 1944, taxpayer Rose Shoong, purchased at prices ranging from 120 $\frac{1}{8}$ to 121 $\frac{7}{8}$, American Telephone & Telegraph Company 15-year three per cent convertible debenture bonds due September 1, 1956, as follows (R. 33):

Face Amount—\$500,000
 Cost—\$604,348.75
 Commission—\$1,250
 Accrued Interest—\$4,902.92
 Total—\$610,501.67

In her income tax return for 1944 taxpayer, Rose Shoong, reported adjusted gross income of \$100,927.43, and deductions of \$96,235.84, which latter figure included a claim of \$85,607.29 as amortization of bond premiums on American Telephone & Telegraph Company bonds. She reported a net income for the taxable year of \$4,691.59. (R. 33.)

On January 8, 9, and 10, 1945, taxpayer Joe Shoong sold, at prices ranging from 123 $\frac{3}{8}$ to 124, his American Telephone & Telegraph Company debenture bonds, as follows (R. 33):

Face Amount—\$500,000
 Selling Price—\$617,262.50
 Interest—\$5,446.32
 Commission—(\$1,250).
 Tax—(\$200.05)
 Ins. & Postage—(\$7.00)
 Net—\$621,251.77

On January 10, 11, 12, 15, and 16, 1945, taxpayer Rose Shoong sold, at prices ranging from 123 to 123 $\frac{3}{4}$, her American Telephone & Telegraph Company debenture bonds, as follows (R. 33-34):

Face Amount—\$500,000
 Selling Price—\$616,522.50
 Interest—\$5,618.32
 Commission—(\$1,252.50)
 Tax—(\$250.45)
 Net—\$620,637.87

These debenture bonds were issued under an indenture by the American Telephone & Telegraph Company and City Bank and Farmers Trust Company, as

trustee, dated September 1, 1941. This indenture provided that, at any time between January 1, 1942, and December 31, 1954, unless previously called for redemption, the debenture bonds were convertible into the capital stock of the company at a conversion price of \$140 per share, payable by surrender of \$100 principal amount of debenture bonds and payment to the company of \$40 in cash for each share of capital stock to be issued upon conversion. It also provided that the company should have the option to redeem all or part of the bonds after September 1, 1942. The redemption price to and including August 31, 1944, was to be \$107, plus accrued interest, and from August 31, 1944, to and including August 31, 1948, was to be \$104, plus accrued interest. (R. 34.)

The entire issue of the debenture bonds was called for redemption on September 1, 1947, at \$104, plus interest. (R. 34.)

The average price of the capital stock of the American Telephone & Telegraph Company on June 21, 1944, was 160½ per share; on June 26, 1944, 160½ per share; and on June 27, 1944, 160¾ per share. (R. 35.)

The price range of these debenture bonds from April 30, 1943, to August 29, 1947, was from 112½ to 157½. The price range of the common stock of the American Telephone & Telegraph Company during the same period was from 147¼ to 199⅝. During the same period the excess in the sale price of the debenture bonds ranged from \$34.75 to \$42. (R. 35.)

During the period April 30, 1943, to November 3, 1944, the selling price of Pacific Gas & Electric Company (Cal.) First Ref. 3¾s bonds ranged from 107⅞ to 112⅞. During the period April 30, 1943, to July 3, 1947, the selling price of Consolidated Edison of New York, Inc., debenture bonds 3½s, due April 1, 1956, ranged from 101½ to 108¼. Standard and Poor's

Monthly Bond Yield Index Public Utility Bonds Rated A-1 monthly averages during the years 1941 to 1947, inclusive, ranged from 2.583 to 2.925. (R. 35.)

The bonds purchased by the taxpayers were not part of the stock in trade of the taxpayers or includible in any inventory of the taxpayers at the close of the taxable year, or held by the taxpayers primarily for sale to customers in the ordinary course of their trade or business. Taxpayers did not, during the calendar year 1944, sell any of the bonds purchased by them, nor did they exercise their privilege of converting these bonds into capital stock of the company. (R. 35-36.)

In each deficiency notice the Commissioner explained his disallowance of the deduction for amortization of bond premium as follows (R. 35):

The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.

The taxpayers in reliance upon information that they would be entitled to claim, in the year 1944, a deduction for amortization of the amount by which the cost exceeded the call price, purchased the bonds with the intention of making such a claim for a deduction for amortization and of selling the bonds after holding them for more than six months so that the gain, if any, upon the sale would be subject to tax as long-term capital gain. (R. 36.)

Upon the basis of these facts, and its earlier decision in *Korell v. Commissioner*, 10 T. C. 1001, the Tax Court reversed the Commissioner's determination (R. 36-37), and the Commissioner has appealed from that ruling (R. 39-40, 43-44).

STATEMENT OF POINTS TO BE URGED

The points relied upon by the Commissioner as a basis for these appeals are as follows (R. 47-50):

1. The Tax Court erred in each case in holding and deciding that the premium paid for bonds callable for redemption on 30 days' notice is amortizable in full in the year of acquisition under Sections 23 (v) and 125 of the Internal Revenue Code, notwithstanding the premium may have been due entirely to accompanying privilege of converting into the obligor's stock at a price below current market value.

2. The Tax Court erred in each case in holding and deciding on the authority of its decision in *Korell v. Commissioner*, 10 T.C. 1001, that the phrase in Section 29.125-5 of Regulations 111 "on a date certain specified in the bond" is a gratuitous addition by the Commissioner not founded upon the statutory language and is directly in conflict with its legislative history.

3. The Tax Court erred in each case in failing to reject the taxpayer's claim for amortization of bond premiums because they were not true bond premiums within the intendment of the statute and Regulations, such as would normally be amortized out of gross interest earnings in order to exclude capital recovered under the guise of interest.

4. The Tax Court erred in each case in failing to hold that the deduction is not within the intendment of the statute and Regulations, for the reason that the purchase of the bonds, the deduction of the bond premiums in full and the sale of the bonds shortly after capital gain rates became applicable, were all parts of a plan of tax avoidance.

5. The Tax Court erred in each case in failing to hold and decide that no part of the so-called premium on

the 15-year, three per cent convertible debenture bonds of the American Telephone and Telegraph Company was deductible in the year 1944 under Sections 23 (v) and 125 of the Internal Revenue Code as amortization of the premium over the call price for the reason that the excess of the purchase price over par represented the market value of the conversion option and was not a true bond premium.

SUMMARY OF ARGUMENT

The Internal Revenue Code provides that in computing taxable net income there may be deducted, among other things, the amount of amortizable bond premium applicable to bonds held by the taxpayer. In this case, the taxpayers acquired debentures which were callable before maturity and could have been called during the taxable year, thus making any premium paid for them deductible from gross income of that year. The debentures also could be converted into common stock of the obligor at any time by surrender thereof and payment of an additional cash consideration.

The taxpayers acquired their debentures at a cost which greatly exceeded their face value and which also greatly exceeded the amount at which they could have been called during the taxable year. They deducted this excess over the call price as amortizable bond premium. The Tax Court construed the statute as authorizing this deduction.

It is clear from the facts of the case that the amounts here involved represented consideration paid for the conversion option contained in the debentures. It did not represent true bond premium. It is the contention of the Commissioner that in enacting the provisions of law here involved Congress intended to allow deductions only for amortization of true bond premium, and that the decision of the Tax Court should be reversed.

ARGUMENT

The Difference Between Cost and Call Price of the Debentures Here Involved Did Not, under the Facts of Record, Represent "Bond Premium" Within the Meaning of Applicable Provisions of the Statute

In asserting the deficiencies here involved the Commissioner of Internal Revenue determined that the sum of \$81,879.94 in the case of Joe Shoong and \$85,607.29 in the case of Rose Shoong, representing the difference between the amounts reported as the cost to each¹ of \$500,000 face amount of American Telephone & Telegraph Company convertible debentures issued under the trust indenture of September 1, 1941, described above² and the amount³ at which the indentures could have been called at the earliest date after acquisition by the taxpayers,⁴ did not represent "amortizable bond premium" within the meaning of Section 125 of the Internal Revenue Code (Appendix, *infra*) which is deductible under Section 23 (v) of the Code (Appendix, *infra*) in computing taxable net income. The facts here involved are not in dispute. The Tax Court held (R. 36-37) that the amounts here involved were deductible under Section 23 (v) of the Code and the only issue for determination here is the correctness of the Tax Court's decision.

The question here involved is essentially one of statutory construction. The position of the Commissioner is that in enacting Sections 23 (v) and 125 of the Internal Revenue Code, here involved, Congress intended to authorize a deduction for "amortization" only of true bond premium, while the effect of the Tax Court's

¹ \$601,879.94 in the case of Joe Shoong (R. 9); \$605,607.29 in the case of Rose Shoong (R. 17).

² Joint Exhibit A-1 attached to the stipulation of facts (R. 23), but omitted from the printed record by order of the Court (R. 52-53).

³ \$520,000 in each case. (R. 9, 17.)

⁴ Section 3.01, pages 28-29, of Exhibit A-1 attached to the stipulation of facts.

decision is to allow a deduction for any amount paid for a "bond", as defined in Section 125 (d) (Appendix, *infra*), in excess of the amount for which it was callable or retirable regardless of what that excess expenditure actually represented.⁵

The decisions in these cases are based upon the Tax Court's earlier decision in *Korell v. Commissioner*, 10 T. C. 1001, which is now pending on appeal by the Commissioner to the Court of Appeals for the Second Circuit, and which involves a similar transaction in the same debentures.⁶ Hence it is necessary to look to the opinion of the Tax Court in the latter case for the reasoning upon which the decisions in the instant cases are based.⁷

Sections 23 (v) and 125 were added to the Internal Revenue Code by Section 126 of the Revenue Act of 1942, c. 619, 56 Stat. 798. Section 23 (v) authorizes a

⁵ Deductions from gross income and exemptions from tax are granted only as a matter of legislative grace and statutes granting such deductions or exemptions are to be strictly construed. This being a claim for deduction from gross income, the burden is upon the taxpayer to bring himself squarely within the provisions of the statute. *Helvering v. Northwest Steel Mills*, 311 U. S. 46, 49; *Deputy v. du Pont*, 308 U. S. 488, 493; *New Colonial Co. v. Helvering*, 292 U. S. 435, 440; *Ilfeld Co. v. Hernandez*, 292 U. S. 62, 66; *Woolford Realty Co. v. Rose*, 286 U. S. 319, 326; *Burnet v. Houston*, 283 U. S. 223, 227.

⁶ These seem to be the only cases to date involving the application of Sections 23 (v) and 125 of the Internal Revenue Code to facts similar to the facts here involved, hence the question is one of first instance.

⁷ While *Korell v. Commissioner*, *supra*, involved a similar transaction in the same issue of debentures, the findings in that case are not as complete as in the instant case and the record does not disclose as clearly as this one the basis of the Commissioner's contention. The findings in that case do not disclose the time or nature of the taxpayer's disposition of his debentures; does not show the market value of securities of similar desirability; and does not show that the transaction was entered into primarily for claiming a tax deduction.

deduction for amortizable bond premiums as provided in Section 125. Briefly, so far as material here, Section 125 provides for amortization of bond premium out of gross interest earnings in order to exclude from gross income capital recovered under the guise of interest and thus truly reflect the income realized from an investment in bonds at a premium.

As the Tax Court points out at the beginning of its opinion in the *Korell* case, *supra*, when the coupon rate of interest carried by a bond issue exceeds the going interest rate for obligations of comparable desirability, the market will tend to place a premium on such bonds. If bonds are purchased for investment under such circumstances the premium paid must be recovered tax-free out of the earnings of the bond, very much as depreciation must be recovered out of the income of depreciable property, if the true distinction between income and recovery of capital is to be preserved. To effect this result is the obvious purpose of Section 125 of the Internal Revenue Code. And the matter would seem to be simple in the case of an ordinary bond with a fixed maturity date. But, as the Tax Court there pointed out, the matter becomes complicated in the case of a bond which is callable before maturity, or is convertible into other securities before maturity, or both as in the instant case.

The statute (Sec. 125 (b) (2), (Appendix, *infra*)), provides that the amortizable bond premium of the taxable year "shall be the amount of the bond premium attributable to such year." So far as material here, it provides (Sec. 125 (b) (1), (Appendix, *infra*)), that the "amount" of bond premium shall be determined with reference to the amount of the "basis" (here cost), and with reference to the amount payable "on maturity

or on earlier call date.”⁸ Otherwise, no provision is made in the case of bonds which may also be convertible into other securities, but the respective Congressional Committee reports indicate that the amortization allowance also applies to *premium* paid on bonds with convertible features. See H. Rep. No. 2333, 77th Cong., 2d Sess., p. 80 (1942-2 Cum. Bull. 372, 433-434), and S. Rep. No. 1631, 77th Cong., 2d Sess., p. 94 (1942-2 Cum. Bull. 504, 576). As will be seen later, the question here is not so much the applicability of Section 125 of the Code as it is whether the amounts here involved constitute “bond premium” within the meaning of the statute.

Section 125 (b) (3) of the Code (Appendix, *infra*) provides that the amortizable amount shall be computed either in accordance with the method of amortizing bond premium regularly employed by the holder of the bond if such method is reasonable (which apparently was not the situation in this case), or “in accordance with regulations prescribing reasonable methods of amortizing bond premium”, prescribed by the Commissioner with the approval of the Secretary of the Treasury.

Section 29.125-5 of Regulations 111 (Appendix, *infra*) provides that “The fact that a bond is callable or

⁸ In its opinion in the *Korell* case, *supra*, the Tax Court said (pp. 1003-1004):

A complication bound to arise was the amortization of premium on bonds callable prior to maturity. Such obligations *although not included in the statute* are covered in a subdivision of the regulations dealing with “Callable and Convertible Bonds.” (Italics supplied.)

But from the above-quoted language of the statute it is clear that bonds callable before maturity were included, leaving for the Commissioner the duty to prescribe Regulations under which the period of amortization would be determined. This was done in the paragraph of the Regulations (Regulations 111, Sec. 29.125-5 (Appendix, *infra*)), referred to by the Tax Court in the *Korell* case, *supra*.

convertible into stock does not, in itself, prevent the application of section 125." With respect to callable bonds this section of the Regulations provides:

For the purposes of such section [Section 125], in the case of a callable bond the earlier call date will be considered as the maturity date and the amount due on such date will be considered as the amount payable on maturity, unless the taxpayer regularly employs a different method of amortization which is reasonable. * * *

All the Regulations (Sec. 29.125-5) say with respect to convertible bonds is that "A convertible bond is within the scope of section 125 if the option to convert on a date certain specified in the bond rests with the holder thereof." But the Regulations do not mention situations such as here involved where the bond is convertible by the holder at his option at any time before it is called, rather than "on a date certain specified in the bond." Nor is anything said about what would be the "due date" of a convertible bond within the meaning of the statute where, as here, the bond is convertible at any time at the option of the holder where no "date certain" is specified in the bond.

In its opinion in the *Korell* case, *supra*, the Tax Court held that the above sentence in the Regulations, "whatever its meaning may be", could not apply here because the bonds involved, which were of the same issue as in the instant case, were convertible at the option of the holder "on any date from the minute he acquired them." It went further and said that the words "on a date certain specified in the bond" (pp. 1006-1007)—

appear to be a gratuitous addition by respondent not founded upon the statutory language and directly in conflict with its legislative history. We are accordingly unable to ascribe to it the validity which would result in authorizing respondent's position in this proceeding.

The "legislative history" referred to by the Tax Court in the *Korell* case, *supra* (p. 1006), is the following statement found in the reports of the House Ways and Means Committee (H. Rep. No. 2333, *supra*, p. 80) and Senate Committee on Finance (S. Rep. No. 1631, *supra*, p. 94) :

The fact that a bond is callable or convertible into stock does not of itself prevent the application of this section. In the case of a callable bond, the earliest call date will, for the purposes of this section, be considered as the maturity date. Hence, the total premium is required to be spread over the period from the date as of which the basis of the bond is established down to the earliest call date, rather than down to the maturity date. In the case of a convertible bond, *if the option to convert the bond into stock rests with the owner of the bond, the bond is within the purview of this section.* (Italics supplied.)

The above provision of Section 29.125-5 of the Regulations, that a convertible bond is within the scope of Section 125 of the Code if the option to convert "on a date certain specified in the bond" rests with the holder thereof, does not necessarily exclude bonds convertible at any time by the holder, and, to the extent that the Tax Court's decision purports to hold the Regulations invalid, it in turn is gratuitous. The Commissioner's disallowance of the deductions claimed in these cases was not specifically based upon this or any other provision of the Regulations. The deductions in controversy were disallowed on the ground that the amounts in question were not *true bond premium* within the meaning of the statute. Instead, they represented consideration paid for the conversion privilege acquired with the bonds. (R. 36.)

That the excess of the price paid for the bonds here involved over their face value represented the cost of

the conversion rights can not successfully be denied. The amount paid for the bonds, including the consideration paid for the conversion rights, plus the \$40 additional payable upon conversion, approximately equalled the current value of the capital stock of American Telephone & Telegraph Company into which the debentures could be converted. That the excess in cost over face value of the debentures here involved represented consideration paid for the conversion privilege is further emphasized by the Tax Court's findings (R. 35) with respect to the current selling price of other public utility bonds of comparable investment desirability, but without similar conversion rights, which sold at comparatively small premiums during this period. Furthermore, it would be naive to assume that the bonds here involved were purchased at such exorbitant prices for purely investment purposes.

That the transactions here involved were entered into primarily for tax saving purposes is clear from the Tax Court's findings (R. 33-34) that in January, 1945, more than six months after the dates of purchase, these debentures were resold by the taxpayers at prices approximating their cost, and the further finding (R. 36) that the taxpayers, in reliance upon information that they would be entitled to the deductions here claimed, purchased the debentures with the intention of claiming such deductions and of selling the bonds after holding them more than six months so the gain, if any, upon the sale, would be taxable as long-term capital gain. Surely, the deductions here sought do not represent a tax-free recovery of an investment out of the earnings of the debentures, much as depreciation is recovered out of the income of depreciable property and if, as the Tax Court said in the *Korell* case, *supra* (p. 1003), this was the purpose of Congress in enacting Sections 23 (v)

and 125 of the Internal Revenue Code, the deductions here can not be justified under the statute.

In its opinion in the *Korell* case, *supra*, the Tax Court seems to recognize that the amount claimed as a deduction did not represent true bond premium. In addition to pointing out (p. 1003) that when the coupon rate of interest exceeds the going rate of interest for obligations of comparable desirability the market will tend to place a premium on such bonds, and that if bonds are purchased for investment under such circumstances the premium paid must be recovered tax-free out of the earnings of the bond very much as depreciation must be recovered out of depreciable property income if the true distinction between income and recovery of capital is to be preserved, the Tax Court (p. 1005) cited and quoted from Badger, *Valuation of Industrial Securities* 42,⁹ to the effect that the value of convertible bonds is, in fact, dependent on either one of two factors. As long as the issue into which the bond is convertible remains below the point where conversion is profitable, just so long will the value of the bond be dependent entirely on its investment status. But when the value of the issue into which the bond is convertible rises, the value of the convertible bond reflects both the rate of conversion and the value of the issue into which it can be converted. The formula quoted from "Valuation of Industrial Securities" is at least significant when considered in the light of the facts of this case.

In these cases the taxpayers purchased the debentures in question at approximately \$121 when the common stock into which they could have been converted was selling for approximately \$160.50 per share. (R. 32, 33, 35.) The debentures were currently callable by Ameri-

⁹ See also Badger & Cushman, *Investment Principles and Practices* (1941) 195-202, 746-754.

can Telephone & Telegraph Company on thirty days' notice at \$104. (Joint Ex. A-1, Sec. 3.01, pp. 28-29.) They were convertible at any time by the holder by surrender of the debenture and payment of an additional \$40 in cash. (Joint Ex. A-1, Sec. 4.01, pp. 32-33.) In this situation the Tax Court admitted in its opinion in the *Korell* case, *supra* (pp. 1005-1006), that "in the present case, both the call price and the conversion figures indicate that the premium was paid, not for the investment feature of the bond, but for the right of conversion." This being true, the question involved is whether the Tax Court was correct in holding that Sections 23 (v) and 125 of the Internal Revenue Code permit the deduction, under the guise of "bond premium", of amounts admittedly paid as consideration for features other than the investment features of the bonds. We submit there is nothing in the statute or its legislative history to justify any such interpretation.

The statute obviously does not authorize the deduction of something which is not true bond premium. Section 125 (b) (2) of the Code limits the deduction for a taxable year to "the amount of the bond premium attributable to such year", and under paragraph (1) of that subsection, the amount of the bond premium is the difference between the "basis" of the bond in the hands of the holder for purposes of computing loss on the disposition thereof and the amount payable on maturity or earlier call date.

In this situation we submit the statute should be construed as allowing deductions only for amortization of true bond premium. This construction would be in harmony with the rule applied in *Old Colony R. Co. v. Commissioner*, 284 U. S. 552, involving the deductibility of interest paid on indebtedness, where the Supreme Court said (p. 560) the legislature must be presumed to have used the terms "all interest * * * on its in-

debtedness" in their known and ordinary signification. See also *McClain v. Commissioner*, 311 U. S. 527.

As early as February 17, 1945, the Commissioner, in a special ruling ¹⁰ held with respect to this same issue of American Telephone & Telegraph debentures that the difference between the cost thereof and the amount for which they could be called at the earliest call date could not be deducted as amortizable bond premium because the market clearly indicated that substantially all of the amount paid over the face value of the debentures represented the market value of the conversion option rather than true bond premium. We submit this is a reasonable interpretation of the matter.

The Tax Court apparently based its interpretation of the statute upon the above quoted excerpt from the respective Reports of the Ways and Means Committee of the House and of the Committee on Finance of the Senate made in connection with the provisions here under consideration.¹¹ The Tax Court, after italicizing the last part of the above excerpt said in its opinion in the *Korell* case, *supra* (p. 1006), it "is unequivocal and precisely includes the bonds in controversy." It added: "Petitioner's application of the provision to his situation and his computation of the deduction are thus squarely justified by the expression of congressional intent." But we cannot agree with this conclusion. The statement that a bond which is convertible at the option of the owner is within the purview of the statute does not militate against the Commissioner's position. Bonds which are within the purview of the statute are defined in Section 125 (d) of the Code (Appendix, *infra*) as "any bond, debenture, note or certifi-

¹⁰ See 1945 P-H, par. 76, 157, and 1945 C.C.H., par. 6139, quoted at length in footnote 5 of the Tax Court's opinion in the *Korell* case, *supra*, p. 1005.

¹¹ H. Rep. No. 2333, *supra*, p. 80; S. Rep. No. 1631, *supra*, p. 94.

cate or other evidence of indebtedness" issued by any corporation and bearing interest (including interest-bearing government obligations), with interest coupons or in registered form, but do not include any such obligation which constitutes stock in trade of the taxpayer, or which would properly be included in the inventory of the taxpayer, or which is held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. So far as the question here involved is concerned, it may be assumed that the debentures of American Telephone & Telegraph met this definition of the statute, but that does not mean that amounts paid for the conversion option in such bonds are amortizable bond premium within the meaning of the statute. The situation would be different if the amounts involved represented true bond premium paid for desirable investment features of the debentures.

CONCLUSION

The decision of the Tax Court is wrong. It is contrary to the facts and the law and should be reversed and remanded with directions to enter judgment for the Commissioner of Internal Revenue.

Respectfully submitted,

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MARCH, 1949.

APPENDIX

Internal Revenue Code:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(v) [as added by Sec. 126 of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Bond Premium Deduction*.—In the case of a bondholder, the deduction for amortizable bond premium provided in section 125.

* * * * *

(26 U.S.C. 1946 ed., Sec. 23.)

SEC. 125 [as added by Sec. 126 of the Revenue Act of 1942, *supra*]. AMORTIZABLE BOND PREMIUM.

(a) *General Rule*.—In the case of any bond, as defined in subsection (d), the following rules shall apply to the amortizable bond premium (determined under subsection (b)) on the bond for any taxable year beginning after December 31, 1941:

(1) *Interest wholly or partially taxable*.—In the case of a bond (other than a bond the interest on which is excludible from gross income), the amount of the amortizable bond premium for the taxable year shall be allowed as a deduction.

(2) *Interest wholly tax-exempt*.—In the case of any bond the interest on which is excludible from gross income, no deduction shall be allowed for the amortizable bond premium for the taxable year.

(3) *Adjustment of credit in case of interest partially tax-exempt*.—In the case of any bond the interest on which is allowable as a credit against net income, the credit provided in section 25(a)(1) or (2), or section 26(a), as the case may be, shall be reduced by the amount of the amortizable bond premium for the taxable year.

(For adjustment to basis on account of amortizable bond premium, see section 113(b)(1)(H).)

(b) *Amortizable Bond Premium.*—

(1) *Amount of bond premium.*—For the purposes of paragraph (2), the amount of bond premium, in the case of the holder of any bond, shall be determined with reference to the amount of the basis (for determining loss on sale or exchange) of such bond, and with reference to the amount payable on maturity or on earlier call date, with adjustments proper to reflect unamortized bond premium with respect to the bond, for the period prior to the date as of which subsection (a) becomes applicable with respect to the taxpayer with respect to such bond.

(2) *Amount amortizable.*—The amortizable bond premium of the taxable year shall be the amount of the bond premium attributable to such year.

(3) *Method of determination.*—The determinations required under paragraphs (1) and (2) shall be made—

(A) in accordance with the method of amortizing bond premium regularly employed by the holder of the bond, if such method is reasonable;

(B) in all other cases, in accordance with regulations prescribing reasonable methods of amortizing bond premium, prescribed by the Commissioner with the approval of the Secretary.

(c) *Election on Taxable and Partially Taxable Bonds.*—

(1) *Eligibility to elect and bonds with respect to which election permitted.*—This section shall apply with respect to the following classes of taxpayers with respect to the following classes of bonds only if the taxpayer has elected to have this section apply.

(A) *Partially Tax-Exempt.*—In the case of a taxpayer other than a corporation, bonds with respect to the interest on which the credit provided in section 25(a)(1) or (2) is allowable; and

(B) *Wholly Taxable.*—In the case of any taxpayer, bonds the interest on which is not excludible from gross income but with respect to which the credit provided in section 25(a)(1) or (2), or section 26(a), as the case may be, is not allowable.

(2) *Manner and effect of election.*—The election authorized under this subsection shall be made in accordance with such regulations as the Commissioner with the approval of the Secretary shall prescribe. If such election is made with respect to any bond (described in paragraph (1)) of the taxpayer, it shall also apply to all bonds held by the taxpayer at the beginning of the first taxable year to which the election applies and to all such bonds thereafter acquired by him and shall be binding for all subsequent taxable years with respect to all such bonds of the taxpayer, unless, upon application by the taxpayer, the Commissioner permits him, subject to such conditions as the Commissioner deems necessary, to revoke such election. The election authorized under this subsection in the case of a member of a partnership shall be exercisable with respect to bonds of the partnership only by the partnership. In the case of bonds held by a common trust fund, as defined in section 169, or by a foreign personal holding company, as defined in section 331, the election authorized under this subsection shall be exercisable with respect to such bonds only by the common trust fund or foreign personal holding company.

(d) *Definition of Bond.*—As used in this section, the term “bond” means any bond, debenture, note, or certificate or other evidence of indebted-

ness, issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof), with interest coupons or in registered form, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(26 U.S.C. 1946 ed., Sec. 125.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

Sec. 29.125-1. *In General.*—(a) *Application.*—Section 125 makes provision for the amortization of bond premium by the owners of the bonds. It is mandatory with respect to—

* * * * *

It is optional, at the election of the taxpayer, with respect to—

(1) fully taxable bonds (the interest on which is subject to normal tax and surtax), whether the owner is a corporation, individual, or other taxpayer; and

(2) partially tax-exempt bonds owned by taxpayers other than corporations.

The term “bond” as used in section 125 means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof), with interest coupons or in registered form, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or any

such obligation held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. Since bonds owned by dealers in securities are excluded from the foregoing definition, section 125 has no application to such dealers.

(b) *Operation*.—In the case of a fully tax-exempt bond, the amortizable bond premium for the taxable year is simply an adjustment to the basis or adjusted basis of the bonds. Thus, if such premium is \$1, the basis or adjusted basis of the bond is reduced by \$1. No deduction is allowable on account of such amortizable bond premium. In the case of a fully taxable bond to which section 125 is applicable, the amortizable bond premium is both an adjustment to the basis or adjusted basis of the bond and a deduction.

* * * *

Sec. 29.125-2. *Bond Premium and Amortizable Bond Premium*.—Bond premium on any bond to which section 125 applies is the excess of the amount of the basis (for determining loss on sale or exchange) of the bond over the amount payable at maturity or, in the case of a callable bond, earlier call date. (For determination of applicable call date see section 29.125-5.) If the date as of which such basis of the bond was established precedes the first taxable year with respect to which such section applies to the bond, there shall be made adjustments proper to reflect unamortized bond premium on such bond for the period including the holding period (as determined under section 117(h)) prior to the date as of which section 125 first becomes applicable to the bond in the hands of the taxpayer.

* * * *

Amortizable bond premium on any bond to which section 125 applies is such part of the bond premium on the bond as is attributable to the taxable year.

Sec. 29.125-3. *Methods of Amortization*.—The determinations of the bond premium and amortizable bond premium on any bond to which section 125 applies shall be made in accordance with:

(a) the method of amortization regularly employed by the taxpayer, if such method is reasonable; or

(b) the method of amortization prescribed by this section.

A method of amortization will be deemed “regularly employed” by a taxpayer if the method was consistently followed in taxable years beginning prior to January 1, 1942, or if for taxable years beginning on or after such date the taxpayer (including a taxpayer who followed a different method in taxable years beginning prior to January 1, 1942) initiates in the first taxable year for which the deduction is taken a reasonable method of amortization and consistently follows such method thereafter. * * *

The method of amortization prescribed by this section is as follows:

(1) The bond premium on any bond to which section 125 applies shall be determined in accordance with section 29.125-2 and shall be computed as of the end of the taxable year (or as of the date of disposition or redemption of the bond, if it was disposed of or redeemed in the taxable year) but without regard to the amortizable bond premium for the taxable year; and

(2) The amortizable bond premium on such bond for the taxable year shall be an amount which bears the same ratio to the bond premium on the bond as the number of months in the taxable year during which the bond was owned by the taxpayer bears to the number of months from the beginning of the taxable year (or, if the bond was acquired in the taxable year, from the date of acquisition) to the date of maturity or earlier call date. For the purposes of this

section a fractional part of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month.

Sec. 29.125-4. *Election*.—In the case of a corporation, the election provided in section 125 may be made only with respect to fully taxable bonds. In the case of a taxpayer other than a corporation, the election provided in such section may be made with respect to (a) fully taxable bonds only, or (b) partially tax-exempt bonds only, or (c) both fully taxable bonds and partially tax-exempt bonds. Such election shall be made by the taxpayer by claiming a deduction for the bond premium in his return for the first taxable year to which he desires the election to be applicable. No other method of making such election is permitted. If the election is so made, the taxpayer should attach to his return a statement showing the computation of the deduction. The election shall apply to all bonds in respect of which it was made owned by the taxpayer at the beginning of the first taxable year to which the election applies and also to all bonds of such class (or classes) thereafter acquired by him, and shall be binding for all subsequent taxable year. Upon application by the taxpayer, the Commissioner may permit him to revoke the election, subject to such conditions as the Commissioner deems necessary. * * *

Sec. 29.125-5. *Callable and Convertible Bonds*.—The fact that a bond is callable or convertible into stock does not, in itself, prevent the application of section 125. For the purposes of such section, in the case of a callable bond the earlier call date will be considered as the maturity date and the amount due on such date will be considered as the amount payable on maturity, unless the taxpayer regularly employs a different method of amortization which is reasonable. Hence, the bond premium on such a bond is required to be spread over the period from the date as of which the basis for loss of the bond is established down to the earlier call date,

rather than the maturity date. The earlier call date may be the earliest call date specified in the bond as a day certain, the earliest interest payment date if the bond is callable at such date, the earliest date at which the bond is callable at par, or such other call date, prior to maturity, specified in the bond as may be selected by the taxpayer. A taxpayer who deducts amortizable bond premium with reference to a particular call date may not thereafter use a different call date in the calculation of amortization deductions with respect to such premium. A convertible bond is within the scope of section 125 if the option to convert on a date certain specified in the bond rests with the holder thereof.

No. 12,136

IN THE

United States Court of Appeals
For the Ninth Circuit

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

VS.

JOE SHOONG,

Respondent.

and

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

VS.

ROSE SHOONG,

Respondent.

On Petition for Review of the Decision of the Tax Court
of the United States.

CONSOLIDATED BRIEF FOR RESPONDENTS.

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No. 12,136

IN THE

**United States Court of Appeals
For the Ninth Circuit**

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

JOE SHOONG,
Respondent.

and

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

ROSE SHOONG,
Respondent.

**On Petition for Review of the Decision of the Tax Court
of the United States.**

CONSOLIDATED BRIEF FOR RESPONDENTS.

A. OPINION BELOW.

The Memorandum Findings of Fact and Opinion of the Tax Court, including the decisions, (R. 31, et seq.) are reported at 7 TCM-367 (CCH).

B. JURISDICTION.

The consolidated appeals concern alleged deficiencies asserted by the Commissioner of Internal Revenue in respect to the respondents' personal income taxes for the year 1944. The two cases affecting each of the respondents have been consolidated for briefing, hearing, argument and decision. (R. 52.) The consolidated cases are brought to this Court by a petition filed October 25, 1948, (R. 39) by the said Commissioner to review the aforesaid decision of the Tax Court entered August 9, 1948, which redetermined a deficiency as to the respondent, Joe Shoong, in the amount of \$136.63 (R. 37), and as to respondent, Rose Shoong, in the amount of \$557.44 (R. 38).

The amount in controversy in the case of Joe Shoong is \$58,441.99 (R. 8), and \$61,841.00 in the case of Rose Shoong (R. 16, 18), representing those portions of the alleged deficiencies determined by the Commissioner which were disallowed by the Tax Court.

Jurisdiction is conferred on the above entitled Court by Section 1141 (a) of the Internal Revenue Code as amended by Section 36 of the Act of June 25, 1948.

C. QUESTION PRESENTED.

The question presented in these consolidated appeals is whether the Tax Court properly determined that the respondents may take as a deduction in computing their 1944 net taxable income the amortization of premiums paid by them in the purchase in 1944 of American Tele-

phone and Telegraph Company fifteen year, three per cent, convertible debenture bonds dated September 1, 1941, and due September 1, 1956.

D. STATUTES AND REGULATIONS INVOLVED.

(a) INTERNAL REVENUE CODE.

Sec. 23. DEDUCTIONS FROM GROSS INCOME.—In computing net income there shall be allowed as deductions:

* * * * *

(v) BOND PREMIUM DEDUCTION.—In the case of a bondholder, the deduction for amortizable bond premium provided in section 125.

Sec. 125. AMORTIZABLE BOND PREMIUM

(a) **General rule.**—In the case of any bond, as defined in subsection (d), the following rules shall apply to the amortizable bond premium (determined under subsection (b)) on the bond for any taxable year beginning after December 31, 1941:

(1) **Interest wholly or partially taxable.**—In the case of a bond (other than a bond the interest on which is excludable from gross income), the amount of the amortizable bond premium for the taxable year shall be allowed as a deduction.

* * * * *

(b) **Amortizable bond premium.**—

(1) **Amount of bond premium.**—For the purposes of paragraph (2), the amount of bond premium, in the case of the holder of any bond, shall be determined with reference to the amount of the basis (for determining loss on sale or exchange) of such bond, and with reference to the amount payable

on maturity or on earlier call date, with adjustments proper to reflect unamortized bond premium with respect to the bond, for the period prior to the date as of which subsection (a) becomes applicable with respect to the taxpayer with respect to such bond.

(2) **Amount amortizable.**—The amortizable bond premium of the taxable year shall be the amount of the bond premium attributable to such year.

(3) **Method of determination.**—The determinations required under paragraphs (1) and (2) shall be made—

(A) in accordance with the method of amortizing bond premium regularly employed by the holder of the bond, if such method is reasonable;

(B) in all other cases, in accordance with regulations prescribing reasonable method of amortizing bond premium, prescribed by the Commissioner with the approval of the Secretary.

(c) **Election on taxable and partially taxable bonds.**—

(1) **Eligibility to elect and bonds with respect to which election permitted.**—This section shall apply with respect to the following classes of taxpayers with respect to the following class of bonds only if the taxpayer has elected to have this section apply.

(A) **Partially Tax-Exempt.**—In the case of a taxpayer other than a corporation, bonds with respect to the interest on which the credit provided in section 25(a) (1) or (2) is allowable; and

(B) **Wholly Taxable.**—In the case of any taxpayer, bonds the interest on which is not

excludable from gross income, but with respect to which the credit provided in section 25(a) (1) or (2), or section 26(a), as the case may be, is not allowable.

(2) **Manner and effect of election.**—The election authorized under this subsection shall be made in accordance with such regulations as the Commissioner with the approval of the Secretary shall prescribe. If such election is made with respect to any bond (described in paragraph (1)) of the taxpayer, it shall also apply to all such bonds held by the taxpayer at the beginning of the first taxable year to which the election applies and to all such bonds thereafter acquired by him and shall be binding for all subsequent taxable years with respect to all such bonds of the taxpayer, unless, upon application by the taxpayer, the Commissioner permits him, subject to such conditions as the Commissioner deems necessary, to revoke such election.

* * *

(d) **Definition of bond.**—As used in this section, the term “bond” means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof), with interest coupons or in registered form, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(b) REGULATIONS 111.

Sec. 29.125-1. In General.—(a) **Application.**—Section 125 makes provision for the amortization of bond premium by the owners of the bonds.

* * * * *

It is optional at the election of the taxpayer, with respect to—

(1) fully taxable bonds (the interest on which is subject to normal tax and surtax), whether the owner is a corporation, individual or other taxpayer; and

(2) partially tax-exempt bonds owned by taxpayers other than corporations.

Sec. 29.125-2. Bond Premium and Amortizable Bond Premium.—Bond premium on any bond to which section 125 applies is the excess of the amount of the basis (for determining loss on sale or exchange) of the bond over the amount payable at maturity or, in the case of a callable bond, earlier call date. (For determination of applicable call date see section 29.125-5.) * * *

Sec. 29.125-3. Methods of Amortization.—The determinations of the bond premium and amortizable bond premium of any bond to which section 125 applies shall be made in accordance with:

(a) the method of amortization regularly employed by the taxpayer, if such method is reasonable; or

(b) the method of amortization prescribed by this section.

A method of amortization will be deemed “regularly employed” by a taxpayer if the method was consistently followed in taxable years beginning prior to

January 1, 1942, or if for taxable years beginning on or after such date the taxpayer (including a taxpayer who followed a different method in taxable years beginning prior to January 1, 1942) initiates in the first taxable year for which the deduction is taken a reasonable method of amortization and consistently follows such method thereafter. A taxpayer who regularly employs a method of amortization may be one, for example, who is subject to the jurisdiction of a State or Federal regulatory agency and who, for the purposes of such agency, amortizes the bond premium on his bonds in accordance with a method prescribed or approved by such agency. However, it is not necessary that the taxpayer be subject to the jurisdiction of such an agency or that the method be prescribed or approved by such agency. It is sufficient if the taxpayer regularly employs a method of amortization and if such method is reasonable.

The method of amortization prescribed by this section is as follows:

(1) The bond premium on any bond to which section 125 applies shall be determined in accordance with section 29.125-2 and shall be computed as of the end of the taxable year (or as of the date of disposition or redemption of the bond, if it was disposed of or redeemed in the taxable year) but without regard to the amortizable bond premium for the taxable year; and

(2) The amortizable bond premium on such bond for the taxable year shall be an amount which bears the same ratio to the bond premium on the bond as the number of months in the taxable year during which the bond was owned by the taxpayer bears to the number of months from the beginning of the taxable year (or, if the bond was acquired

in the taxable year, from the date of acquisition) to the date of maturity or earlier call date. For the purposes of this section a fractional part of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month.

Sec. 29.125-5. Callable and Convertible Bonds.— The fact that a bond is callable or convertible into stock does not, in itself, prevent the application of section 125. For the purposes of such section, in the case of a callable bond the earlier call date will be considered as the maturity date and the amount due on such date will be considered as the amount payable on maturity, unless the taxpayer regularly employs a different method of amortization which is reasonable. Hence, the bond premium on such a bond is required to be spread over the period from the date as of which the basis for loss of the bond is established down to the earlier call date, rather than the maturity date. The earlier call date may be the earliest call date specified in the bond as a day certain, the earliest interest payment date if the bond is callable at such date, the earliest date at which the bond is callable at par, or such other call date, prior to maturity, specified in the bond as may be selected by the taxpayer. A taxpayer who deducts amortizable bond premium with reference to a particular call date may not thereafter use a different call date in the calculation of amortization deductions with respect to such premium. A convertible bond is within the scope of section 125 if the option to convert on a date certain specified in the bond rests with the holder thereof.

E. STATEMENT OF THE CASE.

The facts are for the most part set forth in a stipulation received in evidence as Exhibit A-1. (R. 20.) The following statement embraces all the facts that respondents deem to be pertinent.

1. Respondents are husband and wife and reside in Oakland, California. Joe Shoong has an office at 929 Market Street, San Francisco, California (Ex. A-1, Par. 1). (R. 20.)

2. Respondents filed separate returns for the calendar year 1944 with the Collector of Internal Revenue for the First District of California on a community property basis (Ex. A-1, Par. 2). (R. 20-21.)

3. Joe Shoong on June 21, 1944, purchased bonds of the issue described, as follows (Ex. A-1, Par. 3) (R. 21.):

Principal of Bonds	\$500,000.00
Cost	\$600,625.00
Commission	1,250.00
Accrued interest	4,666.66
Total	<u>\$606,541.66</u>

4. Joe Shoong in his income tax return for 1944 reported adjusted gross income of \$104,304.58 and deductions of \$97,533.76, which latter amount included a claim of \$81,879.94 amortization of bond premium on American Telephone and Telegraph Company debenture bonds and reported a net income of \$6,770.82 (Ex. A-1, Par. 4). (R. 21.)

5. Rose Shoong purchased on June 26 and June 27, 1944, bonds of the same issue, as follows (Ex. A-1, Par. 5) (R. 22.):

	June 26, 1944	June 27, 1944	Total
Principal	\$165,000.00	\$335,000.00	\$500,000.00
Cost	\$198,725.00	\$405,623.75	\$604,348.75
Commission	412.50	837.50	1,250.00
Accrued interest	1,608.75	3,294.17	4,902.92
Total	\$200,746.25	\$409,755.42	\$610,501.67

6. Rose Shoong in her income tax return for 1944 reported adjusted gross income of \$100,927.43 and deductions of \$96,235.84, which latter figure included a claim of \$85,607.29 as amortization of bond premium on American Telephone and Telegraph Company bonds and reported a net income of \$4,691.59 (Ex. A-1, Par. 6). (R. 22.)

7. (a) The bonds were issued under an indenture between American Telephone and Telegraph Company and City Bank and Farmers Trust Company as Trustee, dated September 1, 1941, a true and correct copy of which is in evidence herein as Exhibit H. (R. 23.)

(b) The bonds were convertible into capital stock of the issuing company at any time after January 1, 1942, and before January 1, 1954, at the conversion price of \$140.00 per share, subject to certain adjustments (Ex. H, Sec. 4.04) not pertinent here. (R. 21.)

The terms of conversion of the bonds were stated as follows on the bond (Ex. H) (R. 54, Ex. H.):

TERMS OF CONVERSION OF DEBENTURE BONDS INTO CAPITAL STOCK

At any time after January 1, 1942 but not later than December 31, 1954, unless previously called for redemption, the debenture bonds will be convertible into capital stock of the company. The conversion price will be \$140 per share, payable by surrender of \$100 principal amount of debenture bonds and payment to the company of \$40 in cash for each share of capital stock to be issued upon conversion. The conversion price, the number of shares issuable upon conversion and the amount of cash per share payable upon conversion will be subject to adjustment as provided in the indenture.

Surrender of debenture bonds (with unmatured coupons attached) for conversion and payment of cash required upon the conversion is to be made at the office of the treasurer of the company, 195 Broadway, New York, N. Y.

DEBENTURE BONDS MAILED SHOULD BE SENT BY REGISTERED MAIL

(c) The Company had the option to redeem all or from time to time any part of the redemption bonds on or after September 1, 1942, at the following redemption prices (expressed in percentage of the principal amount), together with accrued interest to the date of redemption (Ex. H, pages 28-29) (R. 54, Ex. H.):

To and including August 31, 1944, 107%

Thereafter to and including August 31, 1948, 104%

Thereafter to and including August 31, 1953, 102%

Thereafter, 100%

(d) Notice of exercise of the right to redeem the bonds was required to be published at least four times, the first publication to be not less than 30 days and not more than 90 days before the date fixed for redemption (Ex. H, page 29). (R. 54, Ex H.)

(e) The entire issue of the bonds was called for redemption under the provisions of the bond indenture for payment on September 1, 1947, at 104%, plus interest (Ex. A-1, Par. 10). (R. 23.)

8. The bonds purchased by Joe Shoong and Rose Shoong were not part of their stock in trade, or includible in any inventory of the respondents at the close of the taxable year, or held by them primarily for sale to customers in the ordinary course of their trade or business. They did not, during the calendar year 1944, sell any of the bonds purchased by them, as aforesaid, nor did they exercise their privilege of converting said bonds into capital stock of the company (Ex. A-1, Par. 17). (R. 28-29.)

9. In the deficiency notice the Commissioner determined for the year 1944 with respect to Joe Shoong, as follows (Ex. A-1, Par. 19) (R. 9.):

“(d) You claimed a deduction of \$81,879.94 for amortization of bond premium as follows:

\$500,000.00 face value American Telephone and Telegraph 3% Convertible Bonds of 1956

Cost	\$601,879.94
Call price at \$104.00.....	520,000.00

Amortization	<u>\$81,879.94</u>
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The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.” (R. 9, 29.)

10. In the deficiency notice the Commissioner determined for the year 1944 with respect to Rose Shoong, as follows (Ex. A-1, Par. 20):

“(e) You claim a deduction of \$85,607.29 for amortization of bond premium as follows:

\$500,000.00 face value American Telephone and Telegraph 3% Convertible Bonds of 1956

Cost	\$605,607.29
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Call price at \$104.00.....	520,000.00
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Amortization	<u>\$85,607.29</u>
--------------------	--------------------

The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.” (R. 17-18, 30.)

While, in our view of the case the foregoing are all the facts that are pertinent to the issue, petitioner deems pertinent the further fact that respondents at the time they purchased these bonds intended to amortize the premium paid and to sell the bonds six months thereafter or later, subject to the tax on long term capital gain, and that they sold the bonds in January 1945. We shall endeavor to show in the argument to follow that these circumstances have no bearing upon the question whether

the bond premium is deductible within the meaning and intent of the Code provision.

The dates of the sale of the bonds and proceeds realized are set forth in paragraphs 7 and 8 of the Stipulation of Facts, Exhibit A-1 (R. 21-23).

F. DECISION BY TAX COURT.

An excerpt from the decision by the Tax Court in these cases is set out in Appendix A, *post*.

G. DECISION BY TAX COURT IN RE KORELL, 10 T. C. 1001.

Since the Tax Court in its decision in these cases followed its earlier decision in the *Korell* case (R. 36), we find it desirable to refer to and quote from the opinion in that case. Excerpts from that opinion are set out in Appendix B, *post*.

H. SUMMARY OF ARGUMENT.

1. Under the provisions of the Internal Revenue Code, respondents are entitled to amortize or deduct premiums paid by them upon the bonds purchased.

2. The right to amortize or deduct the aforementioned premiums rests not only upon the letter of the Code provisions, but also upon the obvious intent of the basic statute.

3. The statutory right is recognized in the Regulations issued by the Commissioner in pursuance of the Code Section.

4. Section 125 of the Internal Revenue Code declares unambiguously the precise rules for the determination of the existence of bond premium and the amount thereof.

5. The amount of the bond premium amortized by each of the respondents respectively shows substantial if not exact compliance with the terms of Section 125 of the Code, and is therefore fully deductible under Section 23 (v) thereof.

I. ARGUMENT.

1. UNDER THE PROVISIONS OF THE INTERNAL REVENUE CODE, RESPONDENTS ARE ENTITLED TO AMORTIZE OR DEDUCT PREMIUMS PAID BY THEM UPON THE BONDS PURCHASED.

The pertinent provisions of the Code have been set out in full under Subdivision D, *supra*. It should be sufficient to direct attention to the particular provisions that are determinative of the issues in this particular case.

The term "bond" as used in the Code is defined as
 " * * * any bond, debenture, note, or certificate or other evidence of indebtedness," etc.

There is expressly excluded from the definition of the term "bond"

" * * * any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of

the taxable year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.”

It was stipulated in the Tax Court in the light of the foregoing provision of Subdivision (d) of Section 125 that:

“17. The bonds purchased by petitioners, Joe Shoong and Rose Shoong, were not part of the stock in trade of the petitioners, or includible in any inventory of the petitioners at the close of the taxable years, or held by the petitioners primarily for sale to customers in the ordinary course of their trade or business. Petitioners did not, during the calendar year 1944, sell any of the bonds purchased by them, as aforesaid, nor did they exercise their privilege of converting said bonds into capital stock of the company.” (R. 28, 29.)

The phrase, “any bond,” etc. appearing in the first portion of Subdivision (d), appears to be all-inclusive and therefore includes callable and convertible bonds. The exclusion clause in the latter part of Subdivision (d) contains no express reference to callable or convertible bonds as such, and since particular expressions are limited in their qualification of general expressions, we urge that the general definition of the term “bond” in the first part of Subdivision (d) is expressly limited by the qualification appearing in the latter portion of said subdivision.

The duty rested upon Congress to determine the nature and extent of the qualification or exception to the term “bond”, and since Congress did not include in the quali-

fication or exception "callable or convertible bonds", that fact raises a conclusive presumption that Congress did not intend to make them, and it is not the province of the Court to do so.

Wabash R. R. Co. v. U. S., (8th Cir.) 178 F. 5, 11;
U. S. v. Pan American etc., (9th Cir.) 55 F. (2d)
 758, 772.

Since the latter portion of Subdivision (d) is designed to be an exception, the maxim, "*expressio unius est exclusio alterius*," applies. It is a well settled principle of statutory construction that the expression of one thing excludes others not expressed.

Jones, Collector of Internal Revenue v. Crosswell,
 (4th Cir.) 60 F. (2d) 827, at 828.

To expand the qualifying exception in the latter part of Subdivision (d) by including callable and convertible bonds would violate the cardinal rule of statutory construction which requires exceptions to be strictly construed.

Midland v. Ickes, (8th Cir.) 125 F. (2d) 618, at
 625-6.

2. THE RIGHT TO AMORTIZE OR DEDUCT THE AFOREMENTIONED PREMIUMS RESTS NOT ONLY UPON THE LETTER OF THE CODE PROVISIONS, BUT ALSO UPON THE OBVIOUS INTENT OF THE BASIC STATUTE.

Both the House and Senate Committee Reports in connection with the Revenue Act of 1942, which added Sections 23 (v) and 125 to the Code, affirmatively set forth that:

“The fact that a bond is callable or convertible into stock does not of itself prevent the application of this section. In the case of a callable bond, the earliest call date will, for the purposes of this section, be considered as the maturity date. Hence, the total premium is required to be spread over the period from the date as of which the basis of the bond is established down to the earliest call date, rather than down to the maturity date. In the case of a convertible bond, *if the option to convert the bond into stock rests with the owner of the bond, the bond is within the purview of this section.*” (Emphasis added.)

H. Rep. No. 2333, 77th Cong., 2d Sess., p. 80 (1942-2 CB 372, 433-434); S. Rep. No. 1631, 77th Cong., 2d Sess., p. 94 (1942-2 CB 504, 576).

Under Section 125 (b) (1) of the Code, the amount of the bond premium to be amortized is the difference between the cost or basis and

“* * * the amount payable on maturity or on earlier call date.”

As stated *supra*, in Paragraphs 7 (c) and 7 (d) of the Statement of the Case, the bonds were subject to call at any time on or after September 1, 1942, and to and including August 31, 1953, on thirty days' notice of desire to exercise the right to redeem. Accordingly, the earliest call date with respect to any bonds purchased by the respondents in 1944 was thirty days from the purchase, and the bond premium was therefore to be amortized over the thirty day period.

In the opinion of the Tax Court rendered in the *Korell* case, the italicized portion of the language of the Committee Reports set forth *supra*, is

“* * * unequivocal and precisely includes the bonds in controversy.”

There can appear to be no doubt that the statute as finally enacted by the Congress incorporates the legislative intent as reflected by the House and Senate Committee Reports, all as expressed in the portion above quoted, by providing without equivocation that the rules prescribed by Section 125 apply not only to all bonds coming within the definition of the term as outlined in Subdivision (d), but as well apply in the case of “any bond” as outlined in Subdivision (a), and likewise apply “in the case of the holder of any bond” as outlined in Subdivision (b) (1).

In *Broadcasting etc. Inc. v. Federal Communications Commission* (Dist. of Col.), 171 F. (2d) 1007, 1010, the Court reaffirmed the principle that the most accurate guides for determining legislative intent and purpose

“* * * are the words themselves which were enacted into law, provided those words are unambiguous and unequivocal”

and when language of a statute meets these tests it becomes

“* * * not only the privilege but the duty of this court”

to interpret such statute accordingly.

In *Algoma Plywood etc. Co. v. Wisconsin Employment Relations Board*, decided by the Supreme Court of the United States on March 7, 1949, Mr. Justice Frankfurter, speaking for a majority of the Court, declared, in effect, that Courts are not justified in rejecting legislative in-

terpretation of a statute placed upon it at the time of its enactment, nor to adopt a construction in disregard of legislative history.

3. THE STATUTORY RIGHT IS RECOGNIZED IN THE REGULATIONS ISSUED BY THE COMMISSIONER IN PURSUANCE OF THE CODE SECTION.

The Regulations issued in pursuance of the directions contained in Section 125 recognize the right to amortize bond premiums as was here done by the respective respondents. Section 29.125-5 of Regulations 111 has a heading reading as follows: "Callable and Convertible Bonds." The introductory sentence thereto declares:

"The fact that a bond is callable or convertible into stock does not, in itself, prevent the application of Section 125."

Later in the same section the following sentence appears:

"A convertible bond is within the scope of Section 125 if the option to convert on a date certain specified in the bond rests with the holder thereof."

There is no dispute that the bonds were convertible at the option of the holder at any date he chose, commencing with January 2, 1942, and ending with December 31, 1954. (See *supra*, Statement of the Case, 7 (b).)

It is respectfully submitted that the language of the Regulations 111, Section 29.125-5, are clearly unambiguous, intelligible, and plain. Notwithstanding this fact, the Commissioner seems to take a position completely at variance with the plain significance of the statute and the Regulations.

Of course, the Regulations seek to restrict the application of Section 125 in the case of convertible bonds to bonds conferring the privilege to convert "on a date certain," but this has been characterized by the Tax Court in the *Korell* case as "a gratuitous addition" on the part of the Commissioner

"* * * not founded upon the statutory language and directly in conflict with its legislative history." (See *post*, Appendix B.)

The Tax Court added that the difficulty with the Commissioner's "entire position" was that he ignored

"* * * the interpretation which Congress itself placed upon the legislation." (See *post*, Appendix B.)

It is respectfully submitted that in so deciding the *Korell* case, and in adopting the conclusions reached in the *Korell* case for these cases, the Tax Court did not err.

4. SECTION 125 OF THE INTERNAL REVENUE CODE DECLARES UNAMBIGUOUSLY THE PRECISE RULES FOR THE DETERMINATION OF THE EXISTENCE OF BOND PREMIUM AND THE AMOUNT THEREOF.

In each of the notices of deficiency sent to the respondents by the Commissioner the deductions claimed were disallowed in the following language:

"The deduction is disallowed since it is held that the amount does not represent amortizable bond premium. *It is held that the consideration represents the value of the right to convert the bonds into capital stock of the company.*" (Emphasis ours.) (R. 9 and 18.)

In essence, the italicized sentence is the petitioner's theme which runs like a thread through the fabric of his opening brief. In other words, the petitioner claims that the respondents should be denied the right to amortize the premiums admittedly paid for the bonds because of the "conversion privilege acquired with the bonds." (Pet. Br. 14.) The answers to such contention have already been supplied in the earlier portions of this brief, and may be recapitulated as follows:

(a) Convertible bonds were not excluded from the definition of "bonds" under the Code. In fact, the Commissioner concedes in his brief that

"* * * so far as the question here involved is concerned it may be assumed that the debentures of American Telephone and Telegraph Company met this definition of the statute." (Pet. Br. 19.)

(b) Both the Senate and House Committee Reports affirmatively disclose such bonds were intended to be excluded. The Tax Court in the *Korell* case declared that

"* * * petitioner's application of the provision to his situation and his computation of the deduction are thus squarely justified by the expression of Congressional intent." (See *post*, Appendix B.)

Of course, the Commissioner frankly declares that he cannot agree with the conclusion reached by the Tax Court.

(c) The Regulations promulgated by the Commissioner specifically and clearly state that convertible bonds are within the scope of the Code provision. Upon this point the Commissioner's position seems to be equivocal, for while he admits that

“* * * a convertible bond is within the scope of Section 125 of the Code if the option to convert on a date certain specified in the bond rests with the holder thereof,”

the Commissioner adds that Section 29.125-5 of the Regulations

“* * * does not necessarily exclude bonds convertible at any time by the holder,” (Pet. Br. 14.)

and his brief further adds that

“* * * to the extent that the Tax Court’s decision purports to hold the Regulations invalid, it in turn is gratuitous.” (Pet. Br. 14.)

We assert that the plain and unambiguous definition of “bond premium” as set forth in the Code must prevail even though the Commissioner contends that the amount paid was not

“* * * true bond premium within the intendment of the statute and Regulations.”

The simple language of the statute supplies the most forceful reply to the Commissioner’s contention. Subdivision (b) (1) of Section 125 declares that the amount of the bond premium

“* * * shall be determined with reference to the amount of the basis * * * of such bond and with reference to the amount payable on maturity or on earlier call date.”

The word “basis” of course means “cost”.

The simplicity of the foregoing language gave birth to equally simple language which the Commissioner placed in his Regulations 111 (Section 29.125-2) as follows:

“Bond premium on any bond to which Section 125 applies is the excess of the amount of the basis (for determining loss on sale or exchange) of the bond over the amount payable at maturity or, in the case of a callable bond, earlier call date.”

What more is needed to clarify that which is already crystal clear, unless it be to put a polish upon the transparent surface of plain language. This function may be performed by a further excerpt from the Reports of the House Ways and Means Committee and the Senate Finance Committee, accompanying the Revenue Act of 1942, which reads:

“Bond premium, in the case of any bond subject to this section, is the total premium thereon; that is, the excess of the basis of the bond for determining loss over the amount payable at maturity. On the other hand, amortizable bond premium is such part of the total premium on the bond as is attributable to the taxable year.”

H. Rep. No. 2333, 77th Cong., 2d Sess., p. 79 (1942-2 CB 372, 432); S. Rep. No. 1631, 77th Cong., 2d Sess., p. 93 (1942-2 CB 504, 574-575).

The petitioner undertakes to sweep all this aside by reiterating either that the statute does not authorize the deduction of something which is not “true bond premium,” or by stating that

“* * * there is nothing in the statute or its legislative history to justify any such interpretation,” (Pet. Br. 17.)

or that the position taken by the taxpayer and approved by the Tax Court is not “within the meaning of the statute”.

It should require little citation of authority to support the well-known principle that the intention of Congress is to be sought for primarily in the language used, and where this expresses an intention reasonably intelligible and plain, it must be accepted without modification by resort to construction or conjecture.

Thompson v. U. S., 246 U.S. 547, 62 L. Ed. 876;

Caminetti v. U. S., 242 U.S. 470, 61 L. Ed. 442, 453;

In re Borchert (Cal.), 47 F. Supp. 387, 390.

The Courts are not at liberty to construe language so plain as to need no construction, or to refer to committee reports where there can be no doubt of the meaning of the words used.

Helvering v. City Bank etc. Co., 296 U.S. 85, 80 L. Ed. 62, 66.

If, therefore, as the result of the position taken by the Commissioner he seeks to raise a doubt as to the meaning of the plain language, and thereupon reference is made to committee reports which confirm the significance of the plain language of the statute, whatever doubt may have arisen by virtue of the Commissioner's position becomes completely dissipated. The Congressional intent must be controlling in the construction of federal statutes, and it is only in the absence of an express or an implied intent that judicial construction may be resorted to.

McKeown v. So. Cal. etc. Forwarder (Cal.), 52 F. Supp. 331; affirmed 148 F. (2d) 840; cert. denied 66 S. Ct. 46; rehearing denied 66 S. Ct. 138.

See also :

Forrestal v. Commissioner (2d Cir.), 120 F. (2d) 223, 225;

Osaka etc. Line v. U. S., 300 U.S. 98.

5. THE AMOUNT OF THE BOND PREMIUM AMORTIZED BY EACH OF THE RESPONDENTS RESPECTIVELY SHOWS SUBSTANTIAL IF NOT EXACT COMPLIANCE WITH THE TERMS OF SECTION 125 OF THE CODE, AND IS THEREFORE FULLY DEDUCTIBLE UNDER SECTION 23 (v) THEREOF.

All of the material facts in these proceedings were covered by a "Stipulation of Facts" filed with the Tax Court. (R. 20.)

This Stipulation of Facts makes manifest that the respondents have unquestionably complied with all statutory requirements, which compliance may be epitomized as follows:

(1) Subsection (a) (1) of Section 125 requires that bond interest be fully taxable.

Interest on the bonds of American Telephone and Telegraph Company was fully taxable, and the requirement of this subsection was therefore fulfilled.

(2) Subsection (b) (1) requires that in determining the bond premium the holder of "any bond" must use the basis "(for determining loss on sale or exchange)" of such bond and the amount payable at the maturity or earlier call date.

Fulfilling this requirement, the respondent, Joe Shoong, used the difference between the purchase price of \$601,-

879.94 (his basis for determining loss) and the earliest call date price of \$520,000.00 as the bond premium, thus leaving the balance of \$81,879.94 for amortization.

Fulfilling this requirement, the respondent, Rose Shoong, used the difference between the purchase price of \$605,607.29 (her basis for determining loss) and the earliest call date price of \$520,000.00 as the bond premium, thus leaving the balance of \$85,607.29 for amortization.

(3) Subsection (b) (2) defines "amortizable bond premium" as the "amount of the bond premium attributable to such year," meaning the taxable year.

Each of the respondents purchased all of his or her bonds in 1944, and the earliest call date was in 1944. It follows, therefore, that the entire premium was amortizable in conformity with the foregoing provision in the taxable year 1944.

(4) Subsection (b) (3) provides that one method of computing amortizable bond premium in addition to the method which may be employed by the holder of the bond, was such method which may be prescribed by the Commissioner.

Each of the respondents followed precisely the method prescribed by the Commissioner in Regulations 111, Section 29.125-5.

(5) Subsection (c) (2) directs that if the taxpayer makes an election with respect to any bond,

"* * * it shall also apply to all such bonds held by the taxpayer at the beginning of the first taxable year to which the election applies."

The respondents purchased in 1944 the bonds in question and sought to amortize the bond premium on "all such bonds."

(6) Subsection (d) was designed to deny to security dealers and traders the opportunity of computing bond premium amortization under Section 125 on bonds held as "stock in trade" primarily for sale to customers in the ordinary course of trade or business.

It was stipulated as to each of the respondents under Paragraph 17 of the Stipulation of Facts (R. 28) in effect that neither of the respondents was a security dealer or trader.

The Commissioner claims that the respondents entered into the transactions here under consideration for tax saving purposes, but he does not assert that the transactions are for that reason illegal, or that by virtue thereof the taxpayers should be denied the right of amortizing the bond premium which they paid. In fact, the Commissioner confesses that the question here involved "is essentially one of statutory construction." (Pet. Br. 9.)

Under these circumstances, it has been held time and again that the legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted.

Sampson Tire etc. Corp. v. Rogan (9th Cir.), 136 F. (2d) 345, 347;

Commissioner v. Eldridge (9th Cir.), 79 F. (2d) 629, 631;

Gregory v. Helvering, 293 U.S. 465, 469;

U. S. v. Isham, 17 Wall, 496, 506;

Superior Oil Co. v. Mississippi, 280 U.S. 390, 395.

All other facts to which the Commission makes reference are immaterial to the issues of this case, and a review of the foregoing elements in the compliance with the statute and the Regulations will serve to demonstrate that the bond premium as defined by statute and as determined in accordance with statute and Regulations was fully deductible under Section 23 (v) of the Code, and under the law applicable to this case. Involving, as the Commissioner concedes, purely a question of statutory construction (Pet. Br. 9), it becomes quite immaterial whether the bond premium is a "true bond premium" or not, with the Commissioner setting himself up as the one to determine what is true and what is not true.

As indicated, Congress undertook to determine by statute what was to be regarded as an "amortizable bond premium", and so long as Congress spoke clearly, it is not the function of the Commissioner to enlarge upon Congressional language, by a standard which is personal to himself and not even suggested in his Regulations.

CONCLUSION.

It is respectfully submitted that the Tax Court interpreted the statute and the Regulations correctly and that its decision should be affirmed.

Dated, San Francisco, California,

March 28, 1949.

Respectfully submitted,

GAVIN McNAB, SCHMULOWITZ,

AIKINS, WYMAN & SOMMER,

NAT SCHMULOWITZ,

PETER S. SOMMER,

SIDNEY F. DEGOFF,

*Attorneys for Respondents,
Joe Shoong and Rose Shoong.*

(Appendices A and B Follow.)

Appendix A

EXCERPT FROM DECISION BY TAX COURT.

The Memorandum Findings of Fact and Opinion of the Tax Court sets forth or refers to all of the facts, statutes and regulations above set forth. (R. 31.) After such recitation and reference, the Tax Court sustained the contentions of the respondents by stating in part (R. 36): (In order to avoid possible confusion, the following excerpt should be read by substituting the word "respondents" wherever the word "petitioner" appears, and likewise substituting the word "petitioner" wherever the word "respondent" appears.)

"(Respondents on appeal) Petitioner, in reliance upon information that they would be entitled to claim, in the year 1944, a deduction for amortization of the amount by which the cost exceeded the call price, purchased the bonds with the intention of making such a claim for a deduction for amortization and of selling the bonds after holding them for more than six months so that the gain, if any, upon the sale would be subject to tax as long-term capital gain.

"The principal issue presented for our decision in these cases has recently been decided by this Court in the case of Christian W. [43] Korell, 10 T.C. * * * (Promulgated June 2, 1948). On the authority of this case we decide in favor of the (respondents on appeal) petitioners.

"On brief (petitioner on appeal) respondent contends for the first time that the commissions paid by the (respondents on appeal) petitioners 'are a part of the cost of the securities and are not deductible in

any event as ordinary and necessary business expenses.' (Petitioner on appeal) Respondent does not elaborate this contention except by citing three cases including *Helferich v. Winnill*, 305 U.S. 79 and *Spreckles v. Helferich*, 315 U.S. 626. (Respondents on appeal) Petitioner correctly points out in reply that there is no question here presented as to whether these commissions should be capitalized or treated as expenses, but, rather, the question is whether, in the amortization of premiums, the commissions paid are to be treated as part of the purchase price. That such a treatment is proper, is recognized by (petitioner's) respondent's Regulation 111, section 29.125-6."

Appendix B

EXCERPTS FROM THE DECISION BY TAX COURT IN RE KORELL, 10 T. C. 1001.

The facts in the *Korell* case are substantially the same as those involved in these cases. Except for variations in the quantities of the bonds purchased, the taxpayers in each case purchased the same kind or issue of bonds of the same company, all subject to the same rights, privileges and restrictions. Without introducing the text of the footnotes included in the opinion (the footnotes include substantially the same material set forth in Subdivision D of this brief) the Tax Court declared:

“OPPER, Judge: When the coupon rate of interest carried by a bond issue exceeds the going rate for obligations of comparable desirability, the market will tend to place a premium on the bonds. If bonds are purchased for investment under such circumstances, the premium paid must be recovered tax-free out of the earnings of the bond very much as depreciation must be recovered out of the income of depreciable property if the true distinction between income and recovery of capital is to be preserved. Cf. *United States v. Ludey*, 274 U.S. 295 [1 USTC, § 234]. With this objective in mind, Congress in 1942 added provisions to the Internal Revenue Code permitting the amortization of bond premium by deductions from gross income.

“A complication bound to arise was the amortization of premium on bonds callable prior to maturity. Such obligations although not included in the statute are covered in a subdivision of the regulations dealing with ‘Callable and Convertible Bonds.’

“The debentures purchased by petitioner in the tax year and which form the subject of this controversy were both callable and convertible. They were currently callable at the option of the obligor at any time on thirty days’ notice at 104 percent of face. They were convertible at any time at the option of the holder into common stock of the obligor upon payment of the difference between the face of the bond and 140 percent of par.

“Petitioner purchased the debentures at approximately 121 when the common stock of the obligor was selling at 163. Relying upon his interpretation of the statute and the regulations, petitioner deducted the difference between 104, the call price, and 121, his purchase price or basis, as a premium. The entire deduction was taken in the year before us, on the theory that the bond could have been called in that same year, and that in that event the entire premium would have been lost.

“Respondent does not dispute such treatment in the case of a bond callable within the current year, but rejects petitioner’s claim here because of the convertible feature of the debentures. His position was set forth in a ruling issued in 1945, dealing with the same issue of debentures as that now in controversy.

“Respondent’s reasoning to justify rejection of the claimed deduction is not without force. He says in effect that what Congress was dealing with when it enacted section 125 was, as we have seen, the investment premium paid in excess of the call or maturity price of an obligation which was required to be paid in order to purchase interest income. Respondent’s regulations, to be sure, do not provide that no bond

'convertible into stock' is within the definition of an amortizable obligation, but that 'the fact that a bond is * * * convertible into stock does not, in itself, prevent the application of section 125.' This, however, advances us only to the point that the mere aspect of convertibility may not necessarily affect the possibility of the payment of an investment premium. Such would be the situation where the relationship between the conversion figure and the market price of the obligor's stock, eliminated value from the conversion privilege. See Badger, 'Valuation of Industrial Securities,' 42. But in the present case, both the call price and the conversion figures indicate that the premium was paid, not for the investment feature of the bond, but for the rights of conversion.

"The final reference in the regulation to a convertible obligation is that contained in the last sentence of the subdivision previously quoted, reading as follows:

"* * * A convertible bond is within the scope of section 125 if the option to convert [on a date certain specified in the bond] rests with the holder thereof.'

If this statement could be taken as fairly interpretative, and whatever its meaning may be, it seems clear that it could under no circumstances apply to these facts, and hence could be disregarded here. The debentures held by petitioner were convertible on any date from the minute he acquired them to their possible future call for redemption and consequently not on 'a date certain.' The result of this sentence would then be neutral and leave open for consideration the question whether the section covered such convertible bonds as those held by petitioner.

“The difficulty with respondent’s entire position, however, is that it ignores the interpretation which Congress itself placed upon the legislation. (Emphasis ours.) In both the Ways and Means Committee and Finance Committee reports, there appears in identical language the following:

“ ‘The fact that a bond is callable or convertible into stock does not of itself prevent the application of this section. In the case of a callable bond, the earliest call date will, for the purposes of this section, be considered as the maturity date. Hence, the total premium is required to be spread over the period from the date as of which the basis of the bond is established down to the earliest call date, rather than down to the maturity date. In the case of a convertible bond, *if the option to convert the bond into stock rests with the owner of the bond, the bond is within the purview of this section.*’ [Italics added.] (Court’s italics.)

“The final statement is unequivocal and precisely includes the bonds in controversy. Petitioner’s application of the provision to his situation and his computation of the deduction are thus squarely justified by the expression of congressional intent. The portion of the sentence of the regulation quoted above which is enclosed in brackets appears to be a gratuitous addition by respondent not founded upon the statutory language and directly in conflict with its legislative history. We are accordingly unable to ascribe to it the validity which would result in authorizing respondent’s position in this proceeding. We see no choice but to disapprove the deficiency.”

No. 12137

United States
Court of Appeals
for the Ninth Circuit

ADRIANO LLANOS-SENARILLOS,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

FILED
APR 20 1949

PAUL P. O'BRIEN,
CLERK

No. 12137

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

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ORAL R. FINCH,

909 Subway Terminal Bldg.,
Los Angeles 13, Calif.

For Appellee:

JAMES M. CARTER,
United States Attorney,

NORMAN W. NEUKON,
LEILA F. BULGRIN,

Assistants U. S. Attorney,
600 U. S. Post Office & Court House Bldg.,
Los Angeles 12, Calif. [1 *]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States, In and
For the Southern District of California, Central
Division

September, 1948, Term

No. 20324

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADRIANO LLANOS-SENARILLOS,

Defendant.

INDICTMENT

[U.S.C., Title 8, Sec. 152—False Statement in Immigration Matter.]

The grand jury charges:

On or about April 20, 1948, at Los Angeles County, California, in the Central Division of the Southern District of California, defendant Adriano Llanos-Senarillos did knowingly and wilfully swear to a false statement in a matter affecting the right of the defendant to remain in the United States, before Lewis A. Denny, a duly appointed Immigrant Inspector of the Immigration and Naturalization Service, of the United States Department of Justice, and authorized by law to administer oaths in such matters, namely: the defendant testified that he had never resided in the United States prior to 1945; that

he had never been deported from the United States and that he had never been convicted of a crime, whereas in truth and in fact, as the defendant then and there well knew, defendant had resided in the United States prior to 1945, defendant had been deported from the United States on February 14, 1940, and defendant had been convicted of the crime of petit larceny on March 22, 1935, and of the crime of first degree burglary on July 21, 1937.

A True Bill.

/s/ (Illegible),
Foreman.

/s/ JAMES M. CARTER,
United States Attorney.

[Endorsed]: Filed Oct. 6, 1948. [2]

At a stated term, to wit: The September Term, A.D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 25th day of October in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Peirson M. Hall, District Judge.

[Title of Cause.]

For arraignment and plea; A. P. Moran, Assistant U. S. Attorney, appearing as counsel for Government; Oral R. Finch, Esq., appearing as counsel for

defendant, who is present on bond; defendant states his true name is as set forth in Indictment, is informed he is entitled to jury trial and counsel, waives reading of Indictment and pleads not guilty. Court

[Title of District Court and Cause.]

orders cause set for trial Nov. 23, 1948, 10 a.m. [3]

WAIVER OF JURY

The above-entitled cause coming on regularly for trial, defendant being present with counsel, Oral R. Finch, Esq., and the defendant being desirous of having the case tried before the Court without a jury, now requests of the Court that the case be so tried and hereby consents that the Court shall sit without a jury and hear and determine the charges against the defendant without a jury. The defendant also waives any special finding of facts by the Court.

Dated 11-23-48.

/s/ ADRIANO S. LLANOS,
Defendant in pro per.

I have advised the defendant fully as to his (her) rights and assure the Court that his (her) request for trial without a jury and waiver of special findings is understandingly made.

Dated 11-23-48.

/s/ ORAL R. FINCH,
Attorney for Defendant.

The United States Attorney hereby waives any special finding of facts and consents that the re-

quest of the defendant be granted and that the trial proceed without a jury.

Dated 11-23-48.

JAMES M. CARTER,
U. S. Attorney,

By /s/ LEILA F. BULGRIN,
Assistant U. S. Attorney.

Approved 11/26/48.

/s/ PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed Nov. 28, 1948. [4]

At a stated term, to wit: The September Term, A.D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday the 26th day of November in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Peirson M. Hall, District Judge.

[Title of Cause.]

For jury trial; Leila Bulgrin, Assistant U. S. Attorney, appearing as counsel for Government; Oral R. Finch and Donald Kolts, Esqs., appearing as counsel for defendant, who is present on bond; counsel stipulate to a non-jury trial and present a waiver

of jury, which is signed and ordered filed. The Court orders that the trial proceed.

Katherine Blum is called, sworn, and testifies for Government. U. S. Exhibit 1 is marked for identification.

Lewis A. Denny is called, sworn, and testifies for Government. U. S. Exhibits 2, 3, and 4 are marked for identification.

On motion of Attorney Bulgrin, U. S. Exhibits 1 to 4, inclusive, are admitted in evidence.

Wm. A. Molter is called, sworn, and testifies for Government.

On motion of Attorney Bulgrin, and counsel for defendant interposing no objection thereto, U. S. Exhibits 5, 6, and 7 are admitted in evidence.

Government rests. At 10:40 a.m. court recesses. At 11 a.m. court reconvenes herein and all being present as before, Court orders trial proceed.

Attorney Kolts moves the Court for a judgment of acquittal and said motion is denied.

Adriano Senarillas-Llanas is called, sworn, and testifies in his own behalf. Defendant rests. [5]

Attorney Bulgrin makes opening statement in behalf of Government. Attorney Kolts argues in behalf of defendant. Attorney Bulgrin makes closing statement in behalf of Government. Court finds defendant guilty as charged and orders cause referred to Prob. Officer for investigation and report and continued to Dec. 20, 1948, 2 p.m., for hearing said report and sentence, and that meantime defendant remain at liberty on his present bond. [6]

District Court of the United States for the Southern
District of California, Central Division

No. 20324—Criminal

UNITED STATES OF AMERICA,

vs.

ADRIANO SENARILLOS-LLANOS.

JUDGMENT AND COMMITMENT

On this 20th day of December, 1948, came the attorney for the government and the defendant appeared in person and by counsel, Donald Koltz, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a finding of guilty of the offense of knowingly and wilfully swearing to a false statement in a matter affecting the right of the defendant to remain in the United States, in violation of Section 152, Title 8, U. S. Code, as charged in the Indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six (6) months in an institution to be selected by the Attorney General.

It Is Adjudged that on the Court's own motion the

bond of the defendant is hereby exonerated, the defendant remanded to the custody of the U. S. Marshal forthwith, and that the bond of the defendant on appeal be fixed in the sum of \$1,000.00.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed Dec. 20, 1948. [7]

[Title of District Court and Cause.]

NOTICE OF APPEAL

That the defendant's name is Adriano Llanos-Senarillos and his address is 800 East Edgeware Road, Los Angeles 26, California.

That the defendant's attorneys and their addresses are Donald Kolts and Oral R. Finch, 909 Subway Terminal Bldg., 417 South Hill Street, Los Angeles 13, Calif., telephone MAdison 60651.

That the defendant is charged with the offense of perjury (U.S.C., Title 8, Sec. 152—False Statement in Immigration Matter).

That on the 20th day of December, 1948, judgment was passed upon the defendant in the above-entitled action and the following sentence imposed upon him:

Six months in the custody of the Attorney General.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the above [8] judgment.

Dated December 20, 1948.

DONALD KOLTS, and
ORAL R. FINCH,

By /s/ DONALD KOLTS,
Attorneys for Appellant.

[Endorsed]: Filed Dec. 20, 1948. [9]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

The defendant respectfully requests that the Clerk of the Court prepare and forward to the United States Circuit Court of Appeal for the Ninth Circuit the following record on appeal:

1. A transcript of the testimony of Lewis A. Denny given upon the trial of the above matter;
2. The testimony of Adriano Llanos-Senarillos given upon the trial of the above matter;
3. A copy of Exhibit No. 1 admitted in evidence at the trial of the above action.

Dated January 5, 1949.

DONALD KOLTS, and
ORAL R. FINCH,

By /s/ ORAL R. FINCH,
Attorneys for Appellant.

[Endorsed]: Filed Jan. 15, 1949. [10]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

The United States of America respectfully requests that the Clerk of the Court prepare and forward to the United States Court of Appeals for the Ninth Circuit, the following additional record on appeal:

1. The Judgment filed December 20, 1948.

Dated this 14th day of January, 1949.

JAMES M. CARTER,
United States Attorney,

NORMAN W. NEUKOM,
Assistant U. S. Attorney,
Chief of Criminal Division,

/s/ LEILA F. BULGRIN,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Jan. 14, 1949. [11]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF AND ORDER
EXTENDING TIME TO FILE RECORD ON
APPEAL

State of California,
County of Los Angeles—ss.

Oral R. Finch, being first duly sworn, deposes and
says:

That he is one of the attorneys for the defendant
in the above-entitled matter. That the last day for
filing the record on appeal in the United States
Circuit Court of Appeals for the Ninth Circuit is
January 29, 1949. That through inadvertence the
Reporter's Transcript was not ordered until some
days ago and that the reporter in the District Court
who reported this case has advised affiant that he is
working on two other appeals, has been out of town,
and expects to be in Court every day with the excep-
tion of weekends and that such weekends are the only
time that he will be able to work on the preparation
of the Transcript in the within matter. That the said
reporter has requested that affiant obtain an order
extending the time [13] for filing the record on ap-
peal in the aforementioned Circuit Court of Appeals
for a period of forty-five days from the date of this
affidavit.

Wherefore, affiant prays this Honorable Court that
it make its order extending the time for the filing the
record on appeal in the United States Circuit Court

of Appeals for the Ninth Circuit to and including March 12, 1949.

/s/ ORAL R. FINCH,
Affiant.

Subscribed and sworn to before me this 25th day of January, 1949.

(Seal) /s/ BENJAMIN W. HENDERSON,
Notary Public in and for Los Angeles, State of California.

Upon reading the foregoing affidavit, and good cause appearing, it is hereby Ordered that the time for filing the record on appeal to the United States Circuit Court of Appeals for the Ninth District in the within matter be, and it is hereby extended to and including March 12, 1949.

Dated at Los Angeles, California, this 25th day of January, 1949.

/s/ PEIRSON M. HALL,
Judge of the District Court of the United States, in and for the Southern District of California, Central Division.

[Endorsed]: Filed Jan. 25, 1949. [14]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 15, inclusive, contain the original Indictment; Waiver of Jury; Judgment and Commitment; Notice of Appeal; Appellant's and Appellee's Designations of Record on Appeal; and Affidavit in Support of and Order Extending Time to File Record on Appeal and full, true and correct copies of Minute Orders Entered October 25 and November 26, 1948, which, together with the original Reporter's Transcript of Proceedings on November 26 and December 20, 1948, and original U. S. Exhibit No. 1, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.80 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 9th day of March, A.D. 1949.

(Seal)

EDMUND L. SMITH,
Clerk.

In the District Court of the United States, In and
For the Southern District of California, Central
Division

Honorable Peirson M. Hall, Judge Presiding.

No. 20324 Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADRIANO LLANOS-SENARILLOS,

Defendant.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS ON TRIAL

Los Angeles, California

November 26, 1948

Appearances: For the Government: James M. Carter, United States Attorney, Los Angeles 12, California; by Leila F. Bulgrin, Assistant United States Attorney. For the Defendant: Donald Kolts, Esq., 303 Rives-Strong Building, Los Angeles 15, California; and Oral R. Finch, Esq., 909 Subway Terminal Building, Los Angeles 13, California. [1*]

* * * *

LEWIS A. DENNY

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Lewis A. Denny; L-e-w-i-s, A.,
D-e-n-n-y.

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

(Testimony of Lewis A. Denny.)

The Clerk: Your address?

The Witness: Immigration and Naturalization Service.

The Clerk: Take the stand.

Direct Examination

By Mrs. Bulgrin:

Q. Mr. Denny, what is your business or occupation?

A. I am a United States Immigrant Inspector.

Q. Were you so occupied on April 20, 1948?

A. I was.

Q. Mr. Denny, have you ever seen the defendant in this [9] case, Mr. Llanos, before?

A. I have.

Q. What was the occasion?

A. Well, in connection with my work I was assigned a file of Adriano Llanos containing an application for suspension of deportation on which a warrant of arrest in deportation proceedings had been issued.

Q. Had that application been made by Mr. Llanos?

A. So far as I know at that time, yes. That is, he had submitted himself to deportation and asked a suspension. So I served the warrant on him and this is the man that I served the warrant on on February 10th of this year.

Q. What was the occasion on April 20, 1948?

A. The hearing to determine whether the Attorney General would exercise his discretion to suspend deportation and to gather the evidence concerning

(Testimony of Lewis A. Denny.)

his eligibility to that relief, his criminal record, family history, as required by Section 19(c) of the Act of 1917.

Q. Do you recall, Mr. Denny, that this defendant was testifying under oath?

A. He was testifying under oath.

Q. Given by you? A. Yes, on all occasions.

The Court: Did you administer the oath?

The Witness: I did, sir. [10]

By Mrs. Bulgrin:

Q. Do you recall, Mr. Denny, if the hearing was in English?

A. It was taken in the English language, he having stated that he understood the English language and spoke the English language.

Q. Did the defendant converse in English?

A. He did.

Q. Who else was present at that hearing, Mr. Denny?

A. Miss Blum took the notes of the hearing. I don't think any other testimony was taken from any witnesses other than Mr. Llanos on that date on the 20th of April.

Q. Mr. Denny, do you recall whether or not any testimony was given by Mr. Llanos at that time in regard to this form?

The Court: Let us have the form marked for identification as well so that the record will show.

Mrs. Bulgrin: Yes, your Honor.

The Witness: We have a certified copy of the form.

The Court: She will take it out of the file.

(Testimony of Lewis A. Denny.)

Mrs. Bulgrin: I don't believe we do have.

The Court: The witness states he would like to have the certified copy included in the record. Whatever originals are of the immigration files are to go into evidence and they can be withdrawn and copies substituted later. [11]

Mrs. Bulgrin: We have a photostat, your Honor.

The Court: This is the form you refer to?

Mrs. Bulgrin: Yes, it is, your Honor.

The Court: Do you have the original?

Mrs. Bulgrin: No, I don't believe this is the correct form. Yes, this is it, your Honor. I have the original here for opposing counsel to compare with.

The Court: This will be marked Government's Exhibit No. 2 for identification.

(The document referred to was marked Government's Exhibit No. 2 for identification.)

The Court: Do you wish to examine the witness on this matter?

Mrs. Bulgrin: Yes, I do, your Honor.

The Witness: What was the question, please?

By Mrs. Bulgrin:

Q. Calling your attention to that form, was there any testimony given in regard to that form by the defendant Adriano Llanos? A. There was.

Q. Was that form exhibited to the defendant at any time during the hearing?

A. It was. This is the basis for the entire procedure. The first Form I-256 is submission to deportation proceedings and application for suspension of deportation which is executed [12] by the——

(Testimony of Lewis A. Denny.)

The Court: Was that submitted to you in his presence?

The Witness: Yes. I submitted it to him.

The Court: With the blanks filled out?

The Witness: They had been filled out prior to the time he came to my attention.

By Mrs. Bulgrin:

Q. In other words, the form was fully executed when he came to you? A. Yes.

I asked him if that was his signature appearing on the Form I-256 and I-55, and he acknowledged that it was.

Then I asked him to read it carefully and state whether any changes should be made.

Q. Did he read it carefully? A. He did.

I asked him particularly to check it as to his present address, his employment, whether there were any arrests that had not been recorded on the form.

I asked him particularly to examine Item No. 24.

Q. Why did you ask him to examine that particular item, Mr. Denny?

The Court: That is a conclusion. Just what you said to him. [13]

By Mrs. Bulgrin:

Q. What did you say to him, Mr. Denny?

A. I asked him to examine Item 24 and see if it was correct or if he desired to make any changes, and he said no.

Q. Did you have in mind any other items on that form, or just that one? A. No.

The Court: What the witness had in mind?

By Mrs. Bulgrin:

(Testimony of Lewis A. Denny.)

Q. Did you ask him to examine particularly any of the other items on the form?

A. Let me say, I asked him to examine the form carefully, all items, and then state whether he wanted to make any changes, particularly with reference to his address, his employment and arrests, and directed his attention particularly to the Item No. 24 on Exhibit No. 2.

The Court: This Item No. 24 and the whole form was in the same condition, that is, as to the blanks being filled out, as it is now?

The Witness: It is.

The Court: At the time you submitted it to him?

The Witness: Yes.

The Court: What date was that?

The Witness: On the 20th of April, sir. [14]

By Mrs. Bulgrin:

Q. That particular paper was offered in evidence, was it, in that hearing?

A. It was made Exhibit No. 2 with the record of the immigration hearing.

Q. Do you recall, Mr. Denny, that any testimony was given, any direct testimony was given, by Adriano Llanos as the result of your questioning in regard to his prior residence in the United States?

A. There was. I asked him if he had been in the United States before.

Q. What did he say?

A. He said he had not.

Q. Was there any direct testimony in regard to his record, his prior criminal record?

A. I asked him if he had ever been arrested and

(Testimony of Lewis A. Denny.)

convicted of any crimes, either here, in the Philippine Islands or elsewhere, and he said no.

Q. Was there any testimony, any direct testimony, in regard to his prior deportation from the United States, if any?

A. I asked him if he had ever been arrested.

The Court: Is this in this transcript?

The Witness: Yes.

Mrs. Bulgrin: Yes. [15]

The Witness: I asked him if he had been arrested.

Mr. Kolts: The transcript would be the best evidence.

The Court: Objection sustained.

Mrs. Bulgrin: It hasn't been offered in evidence.

The Court: Calling your attention to Exhibit 1 for identification, have you examined that since it was transcribed?

The Witness: I have, sir.

The Court: Does that correctly state the questions you asked and the answers which were given?

The Witness: It was.

The Court: Upon that occasion?

The Witness: Yes, your Honor.

Mrs. Bulgrin: At this time, your Honor, I would like to offer the copy into evidence.

The Court: Exhibit No. 1?

Mrs. Bulgrin: Exhibit No. 1.

The Court: In its entirety?

Mrs. Bulgrin: Yes, your Honor.

The Court: Admitted.

(The document referred to was marked Government's Exhibit No. 1 and received in evidence.)

(Testimony of Lewis A. Denny.)

[Printer's Note]: Exhibit No. 1 is set out in full at page 33 of this printed Record.

Mrs. Bulgrin: Also I would like to offer into evidence at this time Exhibit No. 2.

The Court: Admitted. [16]

(The document referred to was marked Government's Exhibit No. 2 and received in evidence.)

By Mrs. Bulgrin:

Q. Mr. Denny, calling your attention to this sheaf of papers here, can you identify these documents?

A. I can. The folder which you have handed me is the central office file of the Immigration and Naturalization Service, consolidated No. A-2699053.

Q. What occasion did you have to view this file or work with it, Mr. Denny, prior to the time of this trial?

A. On February 10th, when I served the warrant of arrest on Mr. Llanos, I fingerprinted him and submitted his fingerprints to the Federal Bureau of Investigation, and when the report came back showing that he had been previously deported I wrote to the central office for this file, and this is the file that they sent me. And I found in that file an executed warrant of deportation showing that the man had been deported, or a man of his name had been deported, from San Francisco on February 14, 1940 in the S.S. President Coolidge.

Mrs. Bulgrin: I would like to have at this time this warrant of deportation of alien marked for identification.

(Testimony of Lewis A. Denny.)

Also, your Honor, I have a photostat of that which I will exhibit to counsel which I would like to substitute.

Mr. Kolts: I have no objection, your Honor, to the [17] filing of the photostat in lieu of the original.

The Court: Very well.

The Clerk: No. 3 for identification.

(The document referred to was marked Government's Exhibit No. 3 for identification.)

By Mrs. Bulgrin:

Q. Mr. Denny, I exhibit to you a document marked "Description of Person Deported," and ask you if you can identify this document.

A. I can.

Before I secured the central office file from Washington I, having knowledge that the man of this name had been deported, requested the San Francisco file.

Q. Mr. Denny, is this sheaf of papers that I hold in my hand the San Francisco file?

A. Yes, File 12020/28134.

Q. Is that the file you received in response to your request?

A. That is. And in this file I found this description of person deported, bearing a photograph which I recognized as being the photograph of the defendant Llanos.

Mrs. Bulgrin: I would like to have this document also marked for identification. I also have a photostat.

Mr. Kolts: No objection.

The Clerk: No. 4 for identification. [18]

(Testimony of Lewis A. Denny.)

(The document referred to was marked Government's Exhibit No. 4 for identification.)

Mrs. Bulgrin: Your Honor, at this time I would like to offer exhibits marked for identification Nos. 3 and 4 into evidence.

The Court: Admitted.

(The documents referred to were marked Government's Exhibits Nos. 3 and 4 and received in evidence.)

Mrs. Bulgrin: That is all.

The Court: Cross examine.

Cross-Examination

By Mr. Kolts:

Q. Mr. Denny, did you have any conversation with the defendant on this day of April 20th which was not placed in the record?

A. No, not during the time of the hearing; not at all.

Q. Well, shortly prior to or at the conclusion of the hearing?

A. I probably did tell him that I wouldn't hear the testimony of his wife that afternoon because I had introduced three additional charges against him and asked him if he wanted to be represented by counsel.

Q. Just before the conclusion of this particular hearing he admitted to you the fact that he had been deported, did he not? [19]

A. He did, when I showed him the report of the

(Testimony of Lewis A. Denny.)

Federal Bureau of Investigation. He stated that that record related to him.

Q. And he also admitted to you the fact that he had been previously convicted, I believe it was in the city of Portland? A. He did.

Q. He admitted to you that he had been convicted in the state courts of the state of California, did he not? A. He did.

Q. Did he give you any reason for the previous statement that he had made to you?

A. I didn't ask him for that, except to this extent: I asked him if that record related to him, and I think the transcript contains his statement, "Yes, it does, but don't tell my wife, she would spring a fit."

Q. That is correct.

The Court: Just a minute now. The transcript here which is Exhibit No. 1?

The Witness: Yes, sir.

The Court: Do you know what page that is on?

The Witness: I think it is down about page 10.

Mr. Kolts: I believe you will find that question on page 10, the last two questions.

The Witness: Yes. [20]

By Mr. Kolts:

Q. Did he tell you at any time how he happened to come to this country the second time after he had been deported?

A. Yes. I questioned him very carefully about that, and as I remember he told me that he had been evacuated here by the Army from the Philippine

(Testimony of Lewis A. Denny.)

Islands because of the fact he had an American citizen wife.

Q. Did he tell what conversation he had with the immigration inspectors in Hawaii?

A. Yes, he did.

Q. What did he tell you about that?

A. He told me that he had told them he had never lived in the United States before, that he was the husband of an American citizen wife.

Q. Did he tell you why he made that statement to them in Hawaii? A. That I can't recall.

Mrs. Bulgrin: Your Honor, I would like to object to that question. I believe it is immaterial.

The Court: Objection overruled. He said he cannot recall.

By Mr. Kolts:

Q. Did he tell you at any time, Mr. Denny, why he had made these various statements which were untrue? [21]

A. I believe the record shows that he said that he didn't want his wife to know about his past record; yes.

The Court: You mean your record shows that?

The Witness: I am sure it does.

The Court: You mean this record?

The Witness: Exhibit No. 1 shows that.

By Mr. Kolts:

Q. Now in any conversation you had with him on that day, either on the record or off the record, did he tell you that while he was in the Philippines he had been a member of the guerrillas?

Mrs. Bulgrin: Your Honor, I think that is highly

(Testimony of Lewis A. Denny.)

incompetent, irrelevant and immaterial, and I think it is objectionable because it does not go to the heart of this charge. The fact that he was in the guerrilla forces is immaterial to the fact that he allegedly committed perjury and would offer no excuse for his perjured statement.

The Court: I suppose it goes to the intent, criminal intent. The objection is overruled.

The Witness: He did say something to the effect that at one time or another during the occupation that he had been associated with or part of the guerrilla forces in the Philippine Islands; yes.

By Mr. Kolts:

Q. Did he further tell you that at the time he and [22] his wife, his children, arrived in Hawaii that the fighting was going on in the Philippines?

A. Now that I can't tell you, sir. I don't recall that I asked a question along that line.

Q. Do you recall his telling you that the reason that he misrepresented the facts to the Immigration Service in Hawaii was because he was afraid if he told the truth—

A. That is right, I recall.

Q. —that they would ship him and his wife and two children back to the Philippines and he might be killed?

A. I recall him saying that; yes.

Q. He made that statement?

A. He did make that statement.

Q. At the time of this hearing he was not represented by counsel, was he?

A. He was advised of his right and waived the right to be represented by counsel on the first occasion.

(Testimony of Lewis A. Denny.)

Q. But subsequently he was represented by counsel?

A. Later he was represented by Mr. Finch; yes.

Mr. Kolts: That is all. Thank you.

The Court: Step down.

(Witness excused.) [23]

* * * *

ADRIANO SENARILLOS-LLANOS

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows: [29]

The Clerk: Will you state your full, true and correct name?

The Witness: Adriano Senarillos-Llanos.

The Clerk: Your address?

The Witness: 800 East Edgeware Road.

The Clerk: Take the stand.

Direct Examination

By Mr. Kolts:

Q. You are the defendant, Mr. Llanos?

A. Yes, sir.

Q. And you saw the record of a certain crime of which you were convicted in the city of Portland, Oregon, is that true? A. Yes, sir.

Q. You were also convicted of a felony and sentenced to San Quentin Penitentiary in the state of California, is that true? A. Yes, sir.

Q. And you were subsequently deported to the Philippine Islands? A. Yes, sir.

(Testimony of Adriano Senarillos-Llanos.)

Q. Now what did you do after you arrived in the Philippine Islands?

A. I was working in a big company there buying and selling, and in 1940 I got married. [30]

Q. And you are still living with your wife?

A. Yes, sir.

Q. Who was an American citizen?

A. Yes, sir.

Q. Do you have any children? A. Yes, sir.

Q. How many of them? A. Two.

Q. Now what, if anything, did you do when the war broke out?

A. Well, when the war broke out I joined the Filipino-American guerrillas in the Philippines.

Q. How long did you serve with them?

A. Until the Americans came to the Philippines.

Q. On what date did you leave the Philippine Islands? A. That was in May.

Q. May of what year? A. 1945.

Q. Before you left were you examined by any immigration officials?

A. Yes, I was examined right there in Manila by the American Army Consul.

Q. Was there fighting going on in the Philippines at that time? A. Yes, sir. [31]

Q. What was your reason for desiring to leave the Philippines?

A. You see, I was afraid that my wife and my two children would get killed by the Japanese.

Q. You were again examined by the immigration officials upon your arrival in Hawaii, were you not?

A. Yes, sir.

(Testimony of Adriano Senarillos-Llanos.)

Q. What did you tell them, if anything, about your past history?

A. Well, I denied everything there in Hawaii.

Q. What was your reason for making that denial there?

A. Well, you see, I was afraid that if they knew it they will send us back to the Philippines.

Q. Your wife and your two children included?

A. My wife and two children.

Q. Were you again examined in San Francisco by the immigration officials?

A. Yes, sir.

Q. What did you tell them in San Francisco?

A. Well, I denied it in San Francisco.

Q. Then do you recall being examined by Mr. Denny?

A. Yes, sir.

Q. And at first you denied the facts of your two prior convictions and your deportation from this country to Mr. Denny, didn't you? [32]

A. Yes, sir.

Q. But subsequently in the same hearing you admitted that you had not told them the truth and that those things were true?

A. Yes, sir.

Q. Now what other conversation did you have with Mr. Denny concerning your making those statements?

A. I told Mr. Denny—well, in the first place, I denied it, and the last time that I talked with Mr. Denny I told him the truth.

Q. Did you tell Mr. Denny why you were then telling the truth?

A. I told Mr. Denny that I told the truth because I—I forget now.

(Testimony of Adriano Senarillos-Llanos.)

Q. Do you recall what you told him in that regard?

A. Yes, I told Mr. Denny that the reason why I told, why I denied it, was because I was afraid that they would send my wife and children back to the Philippines.

Q. Did you have any other conversation with Mr. Denny along that subject? A. Yes.

Q. Just tell us what you said to him and what he said to you.

A. Well, I don't remember now. I talked to Mr. Denny about—I don't remember now. [33]

Q. Did you relate to Mr. Denny in substance the same thing that you have testified to here?

A. Yes, sir.

Mr. Kolts: Thank you. You may cross-examine.

Cross-Examination

By Mrs. Bulgrin:

Q. Mr. Llanos, you say you were a member of the Philippine guerrillas? A. Yes, sir.

Q. How long were you so engaged?

A. About two years and a half.

Q. What were the dates involved?

A. Well, I could not recall now but I have the papers in the house. It is 1943 or something.

Q. To 1945? A. 1945.

Q. To your best knowledge, can you give an estimate of how many of your people were so engaged in guerrilla activities at that time?

A. Well, so many I could not recall.

(Testimony of Adriano Senarillos-Llanos.)

Q. Would you say that most of your people over there were engaged in guerrilla action?

A. Not most of them.

Q. A great number of them were engaged in guerrilla activities? [34]

A. Yes, ma'am.

Q. Well, in May, 1945, Mr. Llanos, were the Japanese still on the Philippine Islands?

A. Yes, ma'am.

Q. Were there a great number of them left?

A. Yes, ma'am. Heavy fighting was still going on when I left.

Q. Up in the hills or what?

A. Right in the city.

Q. Right in the city? A. Yes, ma'am.

Q. That was in 1945? A. 1945.

Q. What else did you do during the time you were in the guerrillas, Mr. Llanos?

A. Fight against the Japanese.

Q. Was that a full-time occupation or is that something you carried on as a sideline?

A. Well, that was during our war time.

Q. You say you worked for a big company over there? A. Yes, ma'am; that was 1940.

Q. In 1940? A. Yes.

Q. Did you terminate your work there or did you continue working in this company? [35]

A. No, ma'am.

Q. You ended your work there?

A. Yes, ma'am.

Q. You stopped working there?

A. Stopped working.

Q. Mr. Llanos, you were examined sometime in

(Testimony of Adriano Senarillos-Llanos.)

May, 1945, by the American Army, by the Army authorities, on the Philippine Islands, is that right?

A. That is right.

Q. In regard to your going back to the United States? A. Yes, ma'am.

Q. The American forces were occupying that region at the time, were they not?

A. Some part, some parts not.

Q. Were they occupying the region in which you lived, your wife and children lived?

A. No, they didn't at that time.

Q. Was there any possibility of your wife and children moving to a region which was protected by the Army authorities? A. No.

Q. You say, Mr. Llanos, that you were examined in San Francisco and you again denied your prior record, is that right? A. Yes, ma'am. [36]

Q. And that you denied it again before Inspector Denny? A. Yes, ma'am.

Q. At the time you made your first denial, Mr. Llanos, did you have two children?

A. Yes, ma'am.

Q. How old were they?

A. The oldest one is six and the other one is—no, I made a mistake. What was the question, please?

The Court: Did you have two children, and how old were they—when, counsel?

Mrs. Bulgrin: In 1945.

The Witness: I only have one in 1945.

By Mrs. Bulgrin:

Q. You only had one child in 1945?

A. Yes.

(Testimony of Adriano Senarillos-Llanos.)

Q. What city did you live in? A. Manila.

Q. In Manila? A. Right in Manila.

Q. And you say there was fighting in Manila?

A. That is right.

Q. Between the Japanese and the Americans?

A. Yes, ma'am.

Mrs. Bulgrin: That will be all.

Mr. Kolts: Nothing further. [37]

The Court: Step down.

(Witness excused.)

* * * *

[Endorsed]: Filed March 1, 1949.

GOVERNMENT'S EXHIBIT No. 1

Form 16-212 10-15-1945

United States Department of Justice
Immigration and Naturalization Service
Los Angeles District

File Numbers: A. R.: A-6299053; C. O.: A-6299053;
Dist.: 1600-31427; Port.: 1600-31427.

Report of Hearing (Under 8 CFR 150.10) in the
Case of Adriano Llanos-Senarillos.

Place: Los Angeles 13, California. Date: April 20,
1948.

Presiding Inspector: Lewis A. Denny. Stenog-
rapher: Katherine Blum. Alien's representative:
None.

Warrant of arrest issued under provisions of 8
CFR 150.10, served on February 10, 1948.

Government's Exhibit No. 1—(Continued)

Respondent given copy of warrant of arrest.

Alien informed that he may be represented by counsel.

Presiding Inspector to Respondent

Q. What is your full and correct name?

A. Adriano Senarillos Llanos.

Q. Are you able to speak and understand the English language? A. Yes.

Q. Have you filed with this Service Form I-256, Submission to Deportation Process and Application for Suspension of Deportation, and Form I-55, General Information Form, together with supporting documents requesting suspension of deportation?

A. Yes, sir.

Q. You are advised that the purpose of this hearing is to establish the facts as to your deportability from the United States and eligibility for suspension of deportation. Do you understand?

A. Yes, sir.

Q. Do you solemnly swear that all the statements you are about to make will be the truth, the whole truth, and nothing but the truth, So Help You God?

A. I do.

Q. You are informed that if you wilfully and knowingly give false testimony at this proceeding, you may be prosecuted for perjury, the penalty for which is imprisonment of not more than five years or a fine of not more than \$2,000, or both such fine and imprisonment. Do you understand?

A. Yes, sir.

Government's Exhibit No. 1—(Continued)

Q. You are further advised that false answers to any of the questions in your Application and General Information Forms or at this hearing may bar you from the relief which you request. Do you understand? A. Yes, sir.

Q. You have previously filed with this Service Form I-256, Submission to Deportation Process and Application for Suspension of Deportation, and General Information Form, I-55? A. Yes, sir.

Q. At this time I ask you to examine both the Form I-256 and I-55 and state whether there are any changes in them that should be made, such as place of residence, your financial standing, matter of arrests, or employment?

(Respondent is handed Form I-256 and Form I-55, examines them, and returns them to the Presiding Inspector.)

Q. (Continued): Is that correct?

A. Yes, sir.

Q. Did you check Item 24 on page 3 of the General Information Form, I-55; I notice that you did not consume much time in reading it. Is that correct?

A. Yes, sir.

Q. Are there any changes to be made?

A. No, sir.

Q. I now enter of record, as exhibits, identified by number, the following documents which relate to this proceeding and which will be considered in arriving at a decision in your case. Do you understand?

A. Yes.

Government's Exhibit No. 1—(Continued)

Exhibit 1—Copy of warrant of arrest issued by the District Director at Los Angeles, California, on the 27th day of May, 1947, in the case of Adriano Llanos-Senarillos.

Exhibit 2—Form I-256, Submission to Deportation Process and Application for Suspension of Deportation, and Form I-55, General Information Form, executed by Adriano S. Llanos, which you have examined and stated is correct.

Q. Is that right? A. Yes, sir.

Exhibit 3—Form I-405, Certificate of Arrival of Alien Airman or Seaman, recording the arrival and admission at San Francisco, California, of one Adriano Llanos on the SS. Admiral W. L. Capps, as a seaman for a period of 29 days, on Jan. 12, 1947, under Executive Order No. 9352, which I ask you to examine, and then state whether that record relates to you.

(Respondent is handed Form I-405, examines it, and then returns it to the Presiding Inspector.)

By Respondent: That is right.

Q. Is that your record? A. Yes.

Exhibit 4—Form I-404, recording the arrival and admission at San Francisco, California, from the SS. "Monterey" on May 26, 1945, of one Adriano Llanos, an admission on primary inspection, accompanied by Grace Llanos (Dollison) United States citizen, and Samuel, aged 1, admitted as a visitor for pleasure under Section 3(2) of the Act of 1924 for a period of one year.

Government's Exhibit No. 1—(Continued)

Q. I ask you to examine this and state whether or not this record relates to you?

(Respondent is handed Form I-404, examines it, and then returns it to the Presiding Inspector.)

A. That is right.

Q. Were you and your wife evacuated from the Philippine Islands by the United States Army on that occasion? A. Yes.

Q. What is the date of your marriage?

A. Our house was burned so we had to remarry again.

Q. What is the date of your marriage?

A. April 11, 1945.

Exhibit 5—Photostatic copy of a marriage contract between Adriano Llanos and Grace Dollison, dated the 11th day of April, 1945. (This document is handed to respondent.)

Q. What is this?

A. That is the back of the contract.

Photostatic copy of the reverse side of the contract is endorsed to show the admission of Adriano Llanos for a period of one year at San Francisco, as shown in Exhibit 4.

Exhibit 6—Photostatic copy of baptismal certificate of Samuel Llanos and certification of baptism in the English Language over the signature of Frances H. Purtell, Notary Public.

Exhibit 7—Photostatic copy of birth certificate of Wilhelmina Llanos showing birth at Los Angeles,

Government's Exhibit No. 1—(Continued)
California, on the 17th day of February, 1947, of
Adriano Llanos and Grace Anne Dollison.

Exhibit 8—Affidavit of Annabelle Keen, executed
on the day of and not notarized, and
will be returned to respondent in order to correct
the defect in the affidavit.

Exhibit 9—Affidavit of Fred A. Dollison, 800 E.
Edgeware Road, Los Angeles, California, executed
on the day of which likewise will be
returned to respondent for the completion of jurat.

Exhibit 10—Affidavit of Trinidad M. Holmes. 322
North Bixel Street, Los Angeles, which likewise will
be returned to respondent for completion of the
jurat.

Exhibit 11—Report of independent character in-
vestigation dated at Los Angeles, California, Janu-
ary 26, 1948.

Q. I ask you to read this report and state whether
there is any objection to its inclusion in the record.
(Report handed to respondent, who, after reading
it, returns it to the Presiding Inspector.)

A. They made a mistake here, sir.

Q. Where?

A. I was not a bar boy at the Delmar Beach Club,
I was a waiter.

Exhibit 12—Report of independent investigation
conducted at San Pedro, California, dated June 10,
1947, and signed Charles S. Williams, Immigrant In-
spector.

Q. I ask you to read this, and state whether there
is any objection to its inclusion in the record. (Read

Government's Exhibit No. 1—(Continued)
by respondent and returned to the Presiding Inspector.)

A. That is all right.

Exhibit 13—Report from the Bureau of Resources and Collections, County of Los Angeles, dated July 1, 1947, signed Lurline Porterfield.

Q. I ask you to read this report, and state whether there is any objection to its inclusion in the record. (Read by respondent and returned to the Presiding Inspector.)

A. That is true, we were assisted by the United States Government when we arrived; they gave us money for food and clothing.

Q. What is the date of your birth?

A. September 8, 1906.

Q. Where were you born?

A. Cebu, Philippine Islands.

Q. Of what race of people are you?

A. Filipino.

Q. What is your religious belief?

A. Catholic.

Q. Where were you baptized?

A. At Cebu, P.I.

Q. What was the name of the church?

A. It is a small town church, I can't remember the name.

Q. Where did you go to school?

A. At Cebu.

Q. Is Cebu a province?

A. Where we lived it is a small town.

Q. What is the name of the town?

Government's Exhibit No. 1—(Continued)

- A. Sibonga.
- Q. How far did you go in school?
- A. I went as far as the first year.
- Q. What languages do you write?
- A. Four, Spanish, Talalog, Visayan and English.
- Q. Do you understand my questions?
- A. Yes.
- Q. What is your occupation?
- A. I am a waiter now.
- Q. What is your father's name?
- A. Martin Llanos.
- Q. Where was he born?
- A. In Sibonga, Cebu.
- Q. Of what race of people was he?
- A. Filipino.
- Q. Is he living? A. No, he is dead.
- Q. Where did he die?
- A. In the same town, Sibonga, Cebu.
- Q. Of what country was he a citizen?
- A. Philippine Islands.
- Q. What was your mother's maiden name?
- A. Feliciano Senarillos.
- Q. Where was she born?
- A. In the same town, Sibonga, Cebu.
- Q. Of what race of people was she?
- A. Filipino.
- Q. Is she living? A. Yes.
- Q. Where? A. In Sibonga, Cebu.
- Q. Of what country is she a citizen?
- A. She is a Filipino citizen.
- Q. Of what country are you a citizen?

Government's Exhibit No. 1—(Continued)

A. Right now I am a Filipino, sir.

Q. Do you have evidence that you have registered under the Alien Registration Act of 1940?

A. Yes.

Presents: Form AR-3, No. 6299053, issued to Adriano Senarillos-Llanos, c/o 800 East Edgeware Road, Los Angeles 26, California.

Q. Do you still live at that address?

A. Yes.

Q. Are you married or single? A. Married.

Q. How many times have you been married?

A. First time.

Q. What was the name of your wife?

A. Grace Dollison-Llanos.

Q. Where was she born?

A. Philippine Islands.

Q. Had she ever been married before?

A. No.

Q. When were you married?

A. The first we got married I forget the date, it was in 1940, before the war.

Q. Where were you married?

A. In Manila, P. I. The church was burned too.

Q. And you were remarried again after that?

A. I was remarried because we had no record. It was destroyed.

Q. Are you living with your wife now?

A. Yes, sir.

Q. At what address?

A. 800 E. Edgeware Road, Los Angeles.

Q. Any divorce pending or contemplated?

Government's Exhibit No. 1—(Continued)

A. No.

Q. Of what country is your wife a citizen?

A. United States.

Q. Do you have any evidence of her United States citizenship? A. Yes, sir.

Presents: Certificate of Citizenship, Form N-5600, No. AA-54367 to Grace Dollison-Llanos on July 1, 1946, on Files 1600-22057 and 23-A-10549. Returned.

Q. How did your wife become a citizen, do you know?

A. Well, I think she took the citizenship of her father.

Q. Had your wife ever lived in the United States before she accompanied you here in 1945?

A. No, sir.

Q. Are there any children of your marriage?

A. Yes, we have two.

Q. What is the name of the oldest child?

A. Samuel Llanos.

Q. Where was he born?

A. In Manila, Philippines.

Q. And the facts concerning his birth are as shown in Exhibit 6, is that right? A. Yes, sir.

Q. Did Samuel also accompany you to the United States in 1945? A. Yes, sir.

Q. Have any steps been taken to legalize his United States residence? A. Yes.

Presents: AR-3 Form issued to Samuel Dollison-Llanos, No. 6299054, at same address shown above. Returned.

Q. But what I mean is this—has any application

Government's Exhibit No. 1—(Continued)

been filed in his case to suspend his deportation, has it been done in his case? A. No.

Q. Do you plan to do so?

A. My wife applied, because we heard a child born in a foreign country during Japanese occupation, under the American Law becomes a citizen. I don't know if that is true but my wife has started to find that out.

Q. When and where did you last enter the United States?

A. On the "Admiral Capps" at San Francisco.

Q. What name did you use on the "Admiral Capps"?

A. The same name.

Q. Were you a seaman or passenger?

A. A seaman.

Q. Where did you sign on that ship?

A. At San Francisco.

Q. When did you sign on?

A. I forget now, I have the discharge paper at the house.

Q. Would it be about the 29th day of November, 1946?

A. Yes, I think that was the date.

Q. Where did you go to?

A. To Korea.

Q. And when you returned to the United States on January 12, 1947, you were admitted as a seaman according to Exhibit 3 for a period of 29 days; is that right?

A. Yes.

Q. Have you left the United States since that time?

A. No, sir.

Q. You were examined by United States Immi-

Government's Exhibit No. 1—(Continued)
gration Officers according to Exhibit 3 at that time.
Is that right? A. Yes.

Q. And then admitted for 29 days?

A. Yes, sir.

Q. Now, as a matter of fact, what was your intention with reference to remaining in the United States when you arrived at San Francisco on the "Admiral Capps" on January 12th of last year?

A. Well, I received a letter from Mr. Keegan of the Immigration.

Q. Where?

A. I forget now. I applied for suspension of deportation.

Q. Now, before arriving in San Francisco in January of 1947 had you been examined by United States Immigration Officers?

A. Yes, in San Francisco.

Q. Now that was earlier, was it? A. Yes.

Q. Have you been out of the United States at any time since January 12, 1947? A. To Honolulu.

Q. When did you go to Honolulu?

A. I went to get a job in the Royal Hawaiian Hotel. I didn't stay long.

Q. When was that?

A. I don't remember the date, but that was still the United States.

Q. That is right. But what I am asking you about was in November of last year? A. That is right.

Q. Now, when you arrived at San Francisco on Jan. 12, 1947, intending to remain in the United States, did you have in your possession and surren-

Government's Exhibit No. 1—(Continued)

der to the American Immigration Officers there a visa issued by an American Consul designating you an immigrant coming to the United States to live?

A. A visa?

Q. Did you go to an American Consul and get a visa?
A. No, I didn't.

Q. Have you ever been legally admitted to the United States on presentation of an immigration visa?
A. No.

Q. Have you ever paid a head tax to be legally admitted to the United States for permanent residence?

A. I paid \$8.00. I don't know if that was head tax.

Q. When was that?

A. In May, 1945, I paid \$8.00, I think it was alien tax.

Q. Have you ever been refused admission to the United States?
A. No.

Q. Did you ever try to come in and have the Officers send you back?
A. No.

Q. Exhibit No. 4 is Form I-404, Certificate of Admission of Alien, recording your arrival and admission at San Francisco from the "Monterey" on May 26, 1945, at which time you were accompanied by your wife and son, indicates that you were admitted then for a visit of one year. Is that right?

A. Yes.

Q. And after that you shipped out on the "Admiral Capps"?

A. No, first it was the "Buchanan."

Q. And then?

Government's Exhibit No. 1—(Continued)

A. I stayed here and then I got a notice I had to ship out.

Q. Where?

A. I got a notice I had to go out of the country, at San Francisco.

Q. Then what?

A. That is why I joined the "Admiral Capps." I thought the boat would go to the Philippine Islands.

Q. Now, Exhibit No. 4, which we have identified previously, showing you to have arrived in San Francisco in May of 1945, indicates that you had never before lived in the United States. Is that right?

A. Yes.

Q. You never lived here? A. No.

Q. Have you ever been arrested and deported out of the United States? A. No.

Q. Have you ever been arrested and convicted of any crimes either here or in the Philippine Islands, or elsewhere? A. No.

Q. Do you recall shortly after you first came to the United States in 1945, and to be exact, on September 11, 1946, you made a statement before Inspector Young in this office? A. I think so.

Q. I show you the original of the statement made on September 11, 1946, in Los Angeles by Adriano Llanos-Sinarillos, and ask you to read that and state if that is true and correct? (Statement read by respondent and returned to the Presiding Inspector.)

A. Yes, sir.

Q. A copy of the transcript of the sworn statement which you have made and acknowledged as be-

Government's Exhibit No. 1—(Continued)

ing correct, dated September 11, 1946, is made a part of the record in your hearing and marked Exhibit 14.

Any objection? A. No.

Q. Now you recall on that occasion when asked "Have you registered under the Alien Registration Act of 1940" and you said, "Yes, my Alien Registration Receipt Card number is 6299053"; will you compare that number with the number on the alien receipt card you have shown here this morning?

A. No. 6299053.

Q. When did you register under the Act of 1940?

A. Shortly after I came here.

Q. Do you recall you were then fingerprinted on that occasion? A. Yes, sir.

Q. Do you recall that on February 10th of this year when I served you with the Warrant of Arrest you were also fingerprinted? A. Yes.

Q. I show you at this time, and ask you to examine Form T-2 of the Federal Bureau of Investigation, dated February 19, 1948, relating to one Eddie Sinarillos, Adrian Llanos, Adrian S. Llanos, Adie Lanos Sikirillos, and other names, and then state if that is your record? (Respondent examines Form T-2 and then returns it to Presiding Inspector.)

A. Yes, that is my record. But please don't tell my wife because she would spring a fit.

Q. Now this record indicates that in 1932 at Los Angeles, California, you were placed on probation on the charge of Burglary. Is that correct?

A. Correct, but——

Q. The record also indicates that you have been

Government's Exhibit No. 1—(Continued)
convicted on several occasions, once in Portland, Oregon, and again in Los Angeles—

A. In Seattle, Washington, I was never convicted there, it was the other fellow.

Q. Now, I show you, at this time, a complaint filed in the Municipal Court of the State of Oregon for the City of Portland, County of Multnomah, on the 22nd day of March in the year 1935, wherein it is charged that one Adrian Llanos and Eddie Burges on the 15th day of March in 1935, in the City of Portland, County of Multnomah, State of Oregon, then and there being, did then and there unlawfully take, steal and carry away certain personal property, to-wit: 3 Japanese Kimonas, 3 sashes, 1 ladies fur coat of the value of \$34.00, the property of Roy Akiyama, and a Judgment in the related file, dated the 22nd day of March, 1935, on a plea of guilty to the charge of Petit Larceny, sentenced to serve 365 days in a Multnomah Jail, and ask you to examine that record and then state whether that relates to you. (Record examined by respondent and returned to Presiding Inspector.)

A. That is right.

Q. How did you plead to that offense in Portland in 1935, guilty or not guilty?

A. The other fellow pleaded guilty, so I had to also.

Q. You did plead guilty? A. Yes.

Q. Were you guilty?

A. I was not guilty of the case, but I pleaded guilty.

Government's Exhibit No. 1—(Continued)

By Presiding Inspector:

A certified copy of the Judgment, dated the 22nd day of March, 1935, will be made a part of the record of your hearing and marked as Exhibit 15, together with a copy of a transmittal letter dated March 31, 1948, signed D. W. Tomlinson, Officer in Charge, Portland, explaining the absence of the copy of complaint at the present time, but inasmuch as original certified copy of the complaint filed on the 22nd day of March, 1935, is included in the record of a prior hearing contained in file A-6299053, it is included in your record of hearing by reference.

Copy of T-2, which you have examined and state relates to you, will be made a part of the record of hearing in your case and marked Exhibit 16.

Presiding Inspector to Respondent:

Q. You were also convicted in the city of Los Angeles, were you not? A. Yes, sir.

Q. In what year was that? A. In 1937.

Q. Were you charged with Burglary?

A. Yes.

Q. I show you at this time a certified photostatic copy of an Information filed in the Superior Court of the State of California, County of Los Angeles, No. 68462 in an action styled The People of the State of California, Plaintiff vs. Adrian Llanos, Defendant, on the 22nd day of June, 1937, charging the defendant Adrian Llanos with the crime of Burglary, a felony, in that on the 7th day of June, 1937, at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously enter the

Government's Exhibit No. 1—(Continued)
house and building occupied by one Mrs. Lily White, in the City of Los Angeles, County and State aforesaid, with the intent then and there and therein to unlawfully and feloniously commit theft, and a Judgment of Court entered on the 21st day of July, 1937, wherein it is shown that Adrian Llanos, having pleaded guilty to the offense of Burglary, a felony, as charged in the Information, be punished by imprisonment in the State Prison of the State of California at San Quentin for the term prescribed by law, which I ask you to examine and then state whether that record relates to you. (These documents examined by respondent and returned to the Presiding Inspector.)

A. Yes.

Q. How did you plead to that offense?

A. Because I had to plead guilty, I was advised to do so by the attorney, he told me to.

Q. Did you plead guilty? A. Yes.

Q. Were you guilty?

A. So far as I know I was an accomplice.

Q. Did you enter the house of Mrs. Lily White?

A. It was the other boy, but I was the one picked up.

Q. Where were you picked up?

A. Right near the house.

Q. Were you in the house or out of it?

A. Right in the Court.

By Presiding Inspector:

Now a copy of the certified photostatic copy of Court Record, which you have examined and state

Government's Exhibit No. 1—(Continued)

relates to you, is made a part of the record of your hearing, and marked Exhibit 17.

Presiding Inspector to Respondent:

Q. An examination of Exhibit 16, indicates that in 1937, after having been convicted you were imprisoned at San Quentin. Is that right?

A. Yes, sir.

Q. That imprisonment was a term fixed for 15 years, or five years to life, is that right, that is, the statutory term was 5 years to life, and was fixed for 15 years for the Parole Board.

A. I got out in less than five years.

Q. How were you released from San Quentin?

A. I was paroled to the Philippines.

Q. As a matter of fact you were paroled to the Immigration Service for deportation, were you not?

A. Yes.

Q. And you were deported? A. Yes.

Q. Were you accorded a hearing by Immigration Officers while confined at San Quentin?

A. Yes, I had a hearing.

Q. And it was after that hearing you were taken from San Quentin and placed aboard a ship and removed from the United States by the Immigration Service? A. Yes.

Q. Do you recall when you were taken from San Quentin and placed aboard the ship?

A. Yes, that was on the "President Coolidge."

Q. In what year was that? A. In 1940.

Q. I show you at this time the Warrant of Deportation issued on the 29th day of August, 1938, on

Government's Exhibit No. 1—(Continued)

Central Office File No. 55972/550, San Francisco number 12020/28134, wherein it is directed that Adrian Llanos or Adriana Llano or Adrian Llanos who entered the United States at Astoria, Oregon, on the SS. "West Hixton" on the 4th day of September, 1926, is subject to deportation under Section 19 of the Immigration Act of February 5, 1917, being subject thereto under the following provisions of law, to wit: The Act of 1917, in that he has been sentenced, subsequent to May 1, 1917, to imprisonment more than once for a term of one year or more for the commission subsequent to entry of a crime involving moral turpitude, to wit: Petit Larceny; and Burglary, first degree. Executed on the reverse to show "Executed February 14, 1940, ex. SS. "President Coolidge," signed William A. Motter, Guard. Deported to Manila, P. I.," and ask you to examine this record and then state if that record relates to you and if that is the charge on which you were deported. (Respondent examines the record and returns it to the Presiding Inspector.) A. Yes.

By Presiding Inspector:

A true copy of the Warrant of Deportation which has been identified and shown to have been executed, will be made a part of your record of hearing, and marked Exhibit 18.

Presiding Inspector to Respondent:

Q. Now, as I understand from the record, a hearing was held at San Quentin while you were confined there, is that right? A. Yes.

Q. And I show you, at this time, Form 535, De-

Government's Exhibit No. 1—(Continued)

scription of Person Deported, dated at San Francisco on the 7th day of February, 1940, San Francisco file 12020-28134, bearing a photograph identified by number 60693, 1940, describing Adriana Llanos, age 31 years, married, height 5' 4", departed from Honolulu, T. H. ex SS. "President Coolidge" February 19, 1940, and ask you to examine this document and photograph, and state whether that relates to you. (Document and photograph examined by respondent and returned to the Presiding Inspector.)

A. Yes.

By Presiding Inspector:

A photostatic copy of the Form I-535, description of person deported, will be made a part of the record in your hearing and marked Exhibit 19.

Presiding Inspector to Respondent?

Q. Now were you married at that time?

A. That was just a common law wife. We had been living together for about two years.

Q. Who was she? A. Victorine Harlowe.

Q. Were there any children of that union?

A. No.

Q. Where is that person now?

A. I don't know. I haven't heard from her since I was inside.

Q. Now you are informed that this proceeding, which arose under suspension provisions of law and Section 150.10 of Part 150 of the Code of Federal Regulations, is now terminated, and your hearing henceforth will be conducted under the provisions of Section 150.6 of 8 C.F.R.

Government's Exhibit No. 1—(Continued)

Now, before returning to the United States in 1945 had you applied for and received in writing from the Attorney General of the United States, his written permission for you to attempt to enter or enter the United States? A. No, I did not get it.

Q. You are now placed on notice that in addition to the charge contained in the warrant of arrest, you appear to be subject to deportation under Section 19 of the Immigration Act of February 5, 1917, as amended on the following charges:

(1) In that you admit having committed a felony or other crime or misdemeanor involving moral turpitude prior to entry into the United States, to wit: Petit Larceny and Burglary, a felony;

(2) In that you have been convicted of a felony or other crime or misdemeanor involving moral turpitude prior to entry into the United States, to wit: Petit Larceny and Burglary, a felony;

(3) The Act approved March 4, 1929, as amended, and the Act of February 5, 1917, in that you entered in violation of Section 1(a) of said Act of March 4, 1929, being an alien who had been arrested and deported in pursuance of law and to whom the proper authority had not granted permission to reapply for admission.

Q. Now, under these additional charges you have the right to be represented by an attorney at law, immigration counselor or other person who has been admitted to practice before this Service. Do you wish to be so represented?

A. Well, we have not much money now, what I

Government's Exhibit No. 1.—(Continued)

am earning now is about \$9.00 a day. I will try to get one.

Q. Are you able to post a bond for your release pending the completion of your immigration proceedings? A. How much?

Q. \$500.00? A. Yes.

By Presiding Inspector:

Let the record show that Hearing is adjourned at this point and the respondent turned over to the Investigation Section for temporary detention pending posting of Bond.

Hearing Adjourned: Alien detained in the Los Angeles County Jail, Los Angeles, California, at Government expense.

Certified a true and correct transcript of my stenographic notes of this statement. (Book 1011.)

/s/ KATHERINE BLUM,
Stenographer.

[Endorsed]: Filed March 1, 1949.

[Endorsed]: No. 12137. United States Court of Appeals for the Ninth Circuit. Adriano Llanos-Senarillos, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed March 10, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 12137

ADRIANO LLANOS-SENARILLOS,
Appellant,

vs.

UNITED STATES OF AMERICA,
Respondent.

STATEMENT OF POINT APPELLANT
INTENDS TO RELY UPON

The Appellant intends to rely upon the following point on appeal:

The fact that Adriano Llanos-Senarillos, appellant herein, in his testimony before the Immigration Inspector recanted certain statements and testimony in the same proceeding during the same session within a period of ten or fifteen minutes and that by recanting such testimony such did not constitute perjury.

Dated: March 8, 1949.

DONALD KOLTS and
ORAL R. FINCH,

By /s/ ORAL R. FINCH,
Attorneys for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed March 10, 1949. Paul P.
O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF PRINTED RECORD
ON APPEAL

The Appellant respectfully requests that the Clerk of the Circuit Court print the following record in the above-captioned matter:

1. The testimony of Lewis A. Denny and Appellant Adriano Llanos-Senarillos given upon the trial in the District Court of the United States, in and for the Southern District of California, Central Division, on November 26, 1948.

2. Exhibit No. 1, admitted in evidence on November 26, 1948, at the trial of the above action in the said District Court.

Dated: March 8, 1949.

DONALD KOLTS and
ORAL R. FINCH,

By /s/ ORAL R. FINCH,
Attorneys for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed March 10, 1949. Paul P. O'Brien, Clerk.

No. 12137

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ADRIANO LLANOS SENARILLOS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S OPENING BRIEF.

DONALD KOLTS,

ORAL R. FINCH,

909 Subway Terminal Building, Los Angeles 13,

Attorneys for Appellant.



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No. 12137

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ADRIANO LLANOS SENARILLOS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S OPENING BRIEF.

*To the Honorable United States Court of Appeals for the
Ninth Circuit of the United States of America:*

This is an appeal from the District Court of the United States, in and for the Southern District of California, Central Division, on a conviction of appellant and a judgment of the Court thereon under an indictment for perjury.

Jurisdiction.

This appeal is taken from a judgment and sentence pronounced in the District Court of the United States, in and for the Southern District of California, Central Division, on the 20th day of December, 1948, which judgment

was based upon a verdict of guilty upon an information which was filed in said Court on October 6, 1948, the said appellant having been charged with violating the provisions of the U. S. C., Title 8, Section 152—False Statement in Immigration Matters [Tr. of R. p. 2]. Appellant pleaded not guilty and the cause was set for trial on November 23rd, 1948 [Tr. of R. pp. 3-4]. Subsequently, on November 26th, 1948, the above cause came on for trial and the appellant was found guilty of the offense alleged in the indictment [Tr. of R. p. 5] and on the 20th day of December, 1948, defendant was sentenced [Tr. of R. p. 7]. Subsequently, and in due course a notice of appeal was filed and the appeal perfected [Tr. of R. pp. 8, 9, 10, 11, 12, 13].

Statement of the Case.

Appellant in substance was charged with the offense of making a false statement in a matter affecting the right of the appellant to remain in the United States before Lewis A. Denny, a duly appointed immigration inspector of the Immigration and Naturalization Service of the United States Department of Justice, in that he made a statement while under oath that he had never resided in the United States prior to 1945; that he had never been deported from the United States, and that he had never been convicted of a crime, whereas in truth and in fact, as he then and there well knew, he had resided in the United States prior to 1945, had been deported from the United States in 1940, and had been convicted of the crime

of petty theft in 1935 and of the crime of first degree burglary in 1947.

During the entire course of appellant's trial, he in no way contradicted, either directly or indirectly, that the above facts were not true, freely and openly admitted that he had once been convicted of a felony, once of a misdemeanor and had been deported. The proceedings on which the indictment is based were held before Lewis A. Denny, who it is conceded was a duly and regularly appointed and qualified officer of the Immigration and Naturalization Service and one who is empowered to administer oaths. In the proceedings before Mr. Denny, appellant at first denied the truth of the above facts but within a period of minutes admitted that the above facts were true.

Statement of Questions Involved.

1. The fact that appellant in his testimony before the Immigration Inspector recanted certain statements and testimony in the same proceeding during the same session within a period of minutes and by recanting such testimony did not constitute perjury.

Specifications of Assigned Errors Relied On.

The evidence against appellant is manifestly insufficient to support the verdict of the Court and judgment entered thereon and such verdict and judgment are contrary to the law and the evidence.

ARGUMENT.

Specification of Error No. 1.

It will undoubtedly be conceded by the respondent that the alleged perjurious testimony of the appellant was immediately recanted by him within a few minutes after it was given and during the same proceedings on the same day, date, and place, as the following references to the Transcript of the Record will show:

(Testimony of Lewis A. Denny):

“Q. Did you ask him to examine particularly any of the other items on the form? A. Let me say, I asked him to examine the form carefully, all items, and then state whether he wanted to make any changes, particularly with reference to his address, his employment and arrests, and directed his attention particularly to the Item No. 24 on Exhibit No. 2.

“The Court: This Item No. 24 and the whole form was in the same condition, that is, as to the blanks being filled out, as it is now?

The Witness: It is.

The Court: At the time you submitted it to him?

The Witness: Yes.

The Court: What date was that?

The Witness: On the 20th of April, sir. [14]

By Mrs. Bulgrin:

Q. That particular paper was offered in evidence, was it, in that hearing? A. It was made Exhibit No. 2 with the record of the immigration hearing.

Q. Do you recall, Mr. Denny, that any testimony was given, any direct testimony was given, by Adraino Llanos as the result of your questioning in regard to his prior residence in the United States? A. There was. I asked him if he had been in the United States before.

Q. What did he say? A. He said he had not.

Q. Was there any direct testimony in regard to his record, his prior criminal record? A. I asked him if he had ever been arrested and convicted of any crimes, either here, in the Philippine Islands or elsewhere, and he said no.

Q. Was there any testimony, any direct testimony, in regard to his prior deportation from the United States, if any? A. I asked him if he had ever been arrested.

The Court: Is this in this transcript?

The Witness: Yes.

Mrs. Bulgrin: Yes. [15]

The Witness: I asked him if he had been arrested.

Mr. Kolts: The transcript would be the best evidence.

The Court: Objection sustained.

Mrs. Bulgrin: It hasn't been offered in evidence.

The Court: Calling your attention to Exhibit 1 for identification, have you examined that since it was transcribed?

The Witness: I have, sir.

The Court: Does that correctly state the questions you asked and the answers which were given?

The Witness: It was.

The Court: Upon that occasion?

The Witness: Yes, your Honor.

Mrs. Bulgrin: At this time, your Honor, I would like to offer the copy into evidence.

The Court: Exhibit No. 1?

Mrs. Bulgrin: Exhibit No. 1.

The Court: In its entirety?

Mrs. Bulgrin: Yes, your Honor.

The Court: Admitted.

(The document referred to was marked Government's Exhibit No. 1 and received in evidence.) [Tr. of R. pp. 19, 20.]

[Testimony of Lewis A. Denny, Tr. of R. pp. 23-27]:

"Cross-Examination"

By Mr. Kolts:

Q. Mr. Denny, did you have any conversation with the defendant on this day of April 20th which was not placed in the record? A. No, not during the time of the hearing; not at all.

Q. Well, shortly prior to or at the conclusion of the hearing? A. I probably did tell him that I wouldn't hear the testimony of his wife that afternoon because I had introduced three additional charges against him and asked him if he wanted to be represented by counsel.

Q. Just before the conclusion of this particular hearing he admitted to you the fact that he had been deported, did he not? [19] A. He did, when I showed him the report of the Federal Bureau of Investigation. He stated that that record related to him.

Q. And he also admitted to you the fact that he had been previously convicted, I believe it was in the city of Portland? A. He did.

Q. He admitted to you that he had been convicted in the state courts of the state of California, did he not? A. He did.

Q. Did he give you any reason for the previous statement that he had made to you? A. I didn't ask him for that, except to this extent, I asked him if that record related to him, and I think

the transcript contains his statement, 'Yes, it does, but don't tell my wife, she would spring a fit.'

Q. That is correct.

The Court: Just a minute now. The transcript here which is Exhibit No. 1?

The Witness: Yes, sir.

The Court: Do you know what page that is on?

The Witness: I think it is down about page 10.

Mr. Kolts: I believe you will find that question on page 10, the last two questions.

The Witness: Yes. [20]

By Mr. Kolts:

Q. Did he tell you at any time how he happened to come to this country the second time after he had been deported? A. Yes. I questioned him very carefully about that, and as I remember he told me that he had been evacuated here by the Army from the Philippine Islands because of the fact he had an American citizen wife.

Q. Did he tell what conversation he had with the immigration inspectors in Hawaii? A. Yes, he did.

Q. What did he tell you about that? A. He told me that he had told them he had never lived in the United States before, that he was the husband of an American citizen wife.

Q. Did he tell you why he made that statement to them in Hawaii? A. That I can't recall.

Mrs. Bulgrin: Your Honor, I would like to object to that question. I believe it is immaterial.

The Court: Objection overruled. He said he cannot recall.

By Mr. Kolts:

Q. Did he tell you at any time, Mr. Denny, why he had made these various statements which were un-

true? [21] A. I believe the record shows that he said that he didn't want his wife to know about his past record; yes.

The Court: You mean your record shows that?

The Witness: I am sure it does.

The Court: You mean this record?

The Witness: Exhibit No. 1 shows that.

By Mr. Kolts:

Q. Now in any conversation you had with him on that day, either on the record or off the record, did he tell you that while he was in the Philippines he had been a member of the guerrillas?

Mrs. Bulgrin: Your Honor, I think that is highly incompetent, irrelevant and immaterial, and I think it is objectionable because it does not go to the heart of this charge. The fact that he was in the guerrilla forces is immaterial to the fact that he allegedly committed perjury and would offer no excuse for his perjured statement.

The Court: I suppose it goes to the intent, criminal intent. The objection is overruled.

The Witness: He did say something to the effect that at one time or another during the occupation that he had been associated with or part of the guerrilla forces in the Philippine Islands; yes.

By Mr. Kolts:

Q. Did he further tell you that at the time he and [22] his wife, his children, arrived in Hawaii that the fighting was going on in the Philippines? A. Now that I can't tell you, sir. I don't recall that I asked a question along that line.

Q. Do you recall his telling you that the reason that he misrepresented the facts to the Immigration Service in Hawaii was because he was afraid if he told the truth— A. That is right, I recall.

Q. —that they would ship him and his wife and two children back to the Philippines and he might be killed? A. I recall him saying that; yes.

Q. He made that statement? A. He did make that statement.

Q. At the time of this hearing he was not represented by counsel, was he? A. He was advised of his right and waived the right to be represented by counsel on the first occasion.

Q. But subsequently he was represented by counsel? A. Later he was represented by Mr. Finch; yes.

Mr. Kolts: That is all. Thank you.

The Court: Step down.

(Witness excused.) [23]

* * * * *

ADRIANO SENARILLOS-LLANOS

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows: [29]

The Clerk: Will you state your full, true and correct name?

The Witness: Adriano Senarillos-Llanos.

The Clerk: Your address?

The Witness: 800 East Edgeware Road.

The Clerk: Take the stand.

Direct Examination

By Mr. Kolts:

Q. You are the defendant, Mr. Llanos? A. Yes, sir.

Q. And you saw the record of a certain crime of which you were convicted in the city of Portland, Oregon, is that true? A. Yes, sir.

Q. You were also convicted of a felony and sentenced to San Quentin Penitentiary in the state of California, is that true? A. Yes, sir.

Q. And you were subsequently deported to the Philippine Islands? A. Yes, sir.

Q. Now what did you do after you arrived in the Philippine Islands? A. I was working in a big company there buying and selling, and in 1940 I got married. [30]

Q. And you are still living with your wife? A. Yes, sir.

Q. Who was an American citizen? A. Yes, sir.

Q. Do you have any children? A. Yes, sir.

Q. How many of them? A. Two.

Q. Now what, if anything, did you do when the war broke out? A. Well, when the war broke out I joined the Filipino-American guerrillas in the Philippines.

Q. How long did you serve with them? A. Until the Americans came to the Philippines.

Q. On what date did you leave the Philippine Islands? A. That was in May.

Q. May of what year? A. 1945.

Q. Before you left were you examined by any immigration officials? A. Yes, I was examined right there in Manila by the American Army Consul.

Q. Was there fighting going on in the Philippines at that time? A. Yes, sir. [31]

Q. What was your reason for desiring to leave the Philippines? A. You see, I was afraid that my wife and my two children would get killed by the Japanese.

Q. You were again examined by the immigration officials upon your arrival in Hawaii, were you not? A. Yes, sir.

Q. What did you tell them, if anything, about your past history? A. Well, I denied everything there in Hawaii.

Q. What was your reason for making that denial there? A. Well, you see, I was afraid that if they knew it they will send us back to the Philippines.

Q. Your wife and your two children included? A. My wife and two children.

Q. Were you again examined in San Francisco by the immigration officials? A. Yes, sir.

Q. What did you tell them in San Francisco? A. Well, I denied it in San Francisco.

Q. Then do you recall being examined by Mr. Denny? A. Yes, sir.

Q. And at first you denied the facts of your two prior convictions and your deportation from this country to Mr. Denny, didn't you? [32] A. Yes, sir.

Q. But subsequently in the same hearing you admitted that you had not told them the truth and that those things were true? A. Yes, sir.

Q. Now what other conversation did you have with Mr. Denny concerning your making those statements? A. I told Mr. Denny—well, in the first place, I denied it, and the last time that I talked with Mr. Denny I told him the truth.

Q. Did you tell Mr. Denny why you were then telling the truth? A. I told Mr. Denny that I told the truth because I—I forget now.

Q. Do you recall what you told him in that regard? A. Yes, I told Mr. Denny that the reason why I told, why I denied it, was because I was afraid that they would send my wife and children back to the Philippines.

Q. Did you have any other conversation with Mr. Denny along that subject? A. Yes.

Q. Just tell us what you said to him and what he said to you. A. Well, I don't remember now. I talked to Mr. Denny about—I don't remember now. [33]

Q. Did you relate to Mr. Denny in substance the same thing that you have testified to here? A. Yes, sir.

Mr. Kolts: Thank you. You may cross-examine.

Cross-Examination

By Mrs. Bulgrin:

Q. Mr. Llanos, you say you were a member of the Philippine guerrillas? A. Yes, sir.

Q. How long were you so engaged? A. About two years and a half.

Q. What were the dates involved? A. Well, I could not recall now but I have the papers in the house. It is 1943 or something.

Q. To 1945? A. 1945.

Q. To your best knowledge, can you give an estimate of how many of your people were so engaged in guerrilla activities at that time? A. Well, so many I could not recall.

Q. Would you say that most of your people over there were engaged in guerrilla action? A. Not most of them.

Q. A great number of them were engaged in guerrilla activities? [34] A. Yes, ma'am.

Q. Well, in May, 1945, Mr. Llanos, were the Japanese still on the Philippine Islands? A. Yes, ma'am.

Q. Were there a great number of them left? A. Yes, ma'am. Heavy fighting was still going on when I left.

Q. Up in the hills or what? A. Right in the city.

Q. Right in the city? A. Yes, ma'am.

Q. That was in 1945? A. 1945.

Q. What else did you do during the time you were in the guerrillas, Mr. Llanos? A. Fight against the Japanese.

Q. Was that a full-time occupation or is that something you carried on as a sideline? A. Well, that was during our war time.

Q. You say you worked for a big company over there? A. Yes, ma'am; that was 1940.

Q. In 1940? A. Yes.

Q. Did you terminate your work there or did you continue working in this company? [35] A. No, ma'am.

Q. You ended your work there? A. Yes, ma'am.

Q. You stopped working there? A. Stopped working.

Q. Mr. Llanos, you were examined sometime in May, 1945, by the American Army, by the Army authorities, on the Philippine Islands, is that right?

A. That is right.

Q. In regard to your going back to the United States? A. Yes, ma'am.

Q. The American forces were occupying that region at the time, were they not? A. Some part, some parts not.

Q. Were they occupying the region in which you lived, your wife and children lived? A. No, they didn't at that time.

Q. Was there any possibility of your wife and children moving to a region which was protected by the Army authorities? A. No.

Q. You say, Mr. Llanos, that you were examined in San Francisco and you again denied your prior record, is that right? A. Yes, ma'am. [36]

Q. And that you denied it again before Inspector Denny? A. Yes, ma'am.

Q. And the time you made your first denial, Mr. Llanos, did you have two children? A. Yes, ma'am.

Q. How old were they? A. The oldest one is six and the other one is—no, I make a mistake. What was the question, please?

The Court: Did you have two children, and how old were they—when, counsel?

Mrs. Bulgrin: In 1945.

The Witness: I only have one in 1945.

By Mrs. Bulgrin:

Q. You only had one child in 1945? A. Yes.

Q. What city did you live in? A. Manila.

Q. In Manila? A. Right in Manila.

Q. And you say there was fighting in Manila?
A. That is right.

Q. Between the Japanese and the Americans? A.
Yes, ma'am.

Mrs. Bulgrin: That will be all.

Mr. Kolts: Nothing further. [37]

The Court: Step down.

(Witness excused.) [Tr. of R. pp. 23-33.]

[Excerpts from Government's Exhibit No. 1]:

"Q. Did you go to an American Consul and get a visa? A. No, I didn't.

Q. Have you ever been legally admitted to the United States on presentation of an immigration visa?

A. No.

Q. Have you ever paid a head tax to be legally admitted to the United States for permanent residence? A. I paid \$8.00. I don't know if that was head tax.

Q. When was that? A. In May, 1945, I paid \$8.00, I think it was alien tax.

Q. Have you ever been refused admission to the United States? A. No.

Q. Did you ever try to come in and have the Officers send you back? A. No.

Q. Exhibit No. 4 is Form I-404, Certificate of Admission of Alien, recording your arrival and admission at San Francisco from the "Monterey" on May 26, 1945, at which time you were accompanied by your wife and son, indicates that you were admitted then for a visit of one year. Is that right? A. Yes.

Q. And after that you shipped out on the "Admiral Capps"? A. No, first it was the "Buchanan."

Q. And then? A. I stayed here and then I got a notice I had to ship out.

Q. Where? A. I got a notice I had to go out of the country, at San Francisco.

Q. Then what? A. That is why I joined the "Admiral Capps." I thought the boat would go to the Philippine Islands.

Q. Now, Exhibit No. 4, which we have identified previously, showing you to have arrived in San Francisco in May of 1945, indicates that you had never before lived in the United States. Is that right? A. Yes.

Q. You never lived here? A. No.

Q. Have you ever been arrested and deported out of the United States? A. No.

Q. Have you ever been arrested and convicted of any crimes either here or in the Philippine Islands, or elsewhere? A. No.

Q. Do you recall shortly after you first came to the United States in 1945, and to be exact, on September 11, 1946, you made a statement before Inspector Young in this office? A. I think so.

Q. I show you the original of the statement made on September 11, 1946, in Los Angeles by Adriano Llanos-Sinarillos, and ask you to read that and state

if that is true and correct? Statement read by respondent and returned to the Presiding Inspector.)

A. Yes, sir.

Q. A copy of the transcript of the sworn statement which you have made and acknowledged as being correct, dated September 11, 1946, is made a part of the record in your hearing and marked Exhibit 14. Any objection? A. No.

Q. Now you recall on that occasion when asked 'Have you registered under the Alien Registration Act of 1940' and you said, 'Yes, my Alien Registration Receipt Card number is 6299053'; will you compare that number with the number on the alien receipt card you have shown here this morning? A. No. 6299053.

Q. When did you register under the Act of 1940? A. Shortly after I came here.

Q. Do you recall you were then fingerprinted on that occasion? A. Yes, sir.

Q. Do you recall on February 10th of this year when I served you with the Warrant of Arrest you were also fingerprinted? A. Yes.

Q. I show you at this time, and asked you to examine Form T-2 of the Federal Bureau of Investigation, dated February 19, 1948, relating to one Eddie Sinarillos, Adrian Llanos, Adrian S. Llanos, Adie Lanos Sikirillos, and other names, and then state if that is your record? (Respondent examines Form T-2 and then returns it to Presiding Inspector.) A. Yes, that is my record. But please don't tell my wife because she would spring a fit.

Q. Now this record indicates that in 1932 at Los Angeles, California, you were placed on probation on the charge of Burglary. Is that correct? A. Correct, but—

Q. The record also indicates that you have been convicted on several occasions, once in Portland, Oregon, and again in Los Angeles— A. In Seattle, Washington, I was never convicted there, it was the other fellow.

Q. Now, I show you, at this time, a complaint filed in the Municipal Court of the State of Oregon for the City of Portland, County of Multnomah, on the 22nd day of March in the year 1935, wherein it is charged that one Adrian Llanos and Eddie Burges on the 15th day of March in 1935, in the City of Portland, County of Multnomah, State of Oregon, then and there being, did then and there unlawfully take, steal and carry away certain personal property, to-wit: 3 Japanese Kimonos, 3 sashes, 1 ladies fur coat of a value of \$34.00, the property of Roy Akiyama, and a Judgment in the related file, dated the 22nd day of March, 1935, on a plea of guilty to the charge of Petit Larceny, sentenced to serve 365 days in a Multnomah Jail, and ask you to examine that record and then state whether that relates to you. (Record examined by respondent and returned to Presiding Inspector.) A. That is right.

Q. How did you plead to that offense in Portland in 1935, guilty or not guilty? A. The other fellow pleaded guilty, so I had to also.

Q. You did plea guilty? A. Yes.

Q. Were you guilty? A. I was not guilty of the case, but I pleaded guilty.

By Presiding Inspector:

A certified copy of the Judgment, dated the 22nd day of March, 1935, will be made a part of the record of your hearing and marked as Exhibit 15, together with a copy of a transmittal letter dated March 31, 1948, signed D. W. Tomlinson, Officer in Charge, Portland, explaining the absence of the copy of com-

plaint at the present time, but inasmuch as original certified copy of the complaint filed on the 22nd day of March, 1935, is included in the record of a prior hearing contained in file A-6299053, it is included in your record of hearing by reference.

Copy of T-2, which you have examined and state relates to you, will be made a part of the record of hearing in your case and marked Exhibit 16.

Presiding Inspector to Respondent:

Q. You were also convicted in the city of Los Angeles, were you not? A. Yes, sir.

Q. In what year was that? A. In 1937.

Q. Were you charged with Burglary? A. Yes.

Q. I show you at this time a certified photostatic copy of an Information filed in the Superior Court of the State of California, County of Los Angeles, No. 68462 in an action styled The People of the State of California, Plaintiff vs. Adrian Llanos, Defendant, on the 22nd day of June, 1937, charging the defendant Adrian Llanos with the crime of Burglary, a felony, in that on the 7th day of June, 1937, at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously enter the house and building occupied by one Mrs. Lily White, in the City of Los Angeles, County and State aforesaid, with the intent then and there and therein to unlawfully and feloniously commit theft, and a Judgment of Court entered on the 21st day of July, 1937, wherein it is shown that Adrian Llanos, having pleaded guilty to the offense of Burglary, a felony, as charged in the Information, be punished by imprisonment in the State Prison of the State of California at San Quentin for the term prescribed by law, which I ask you to examine and then state whether that record relates to you. (These documents examined by respondent and returned to the Presiding Inspector.) A. Yes.

Q. How did you plead to that offense? A. Because I had to plead guilty, I was advised to do so by the attorney, he told me to.

Q. Did you plead guilty? A. Yes.

Q. Were you guilty? A. So far as I know I was an accomplice.

Q. Did you enter the house of Mrs. Lily White? A. It was the other boy, but I was the one picked up.

Q. Where were you picked up? A. Right near the house.

Q. Were you in the house or out of it? A. Right in the Court.

By Presiding Inspector:

Now a copy of the certified photostatic copy of Court Record, which you have examined and state relates to you, is made a part of the record of your hearing, and marked Exhibit 17.

Presiding Inspector to Respondent:

Q. An examination of Exhibit 16, indicates that in 1937, after having been convicted you were imprisoned at San Quentin. Is that right? A. Yes, sir.

Q. That imprisonment was a term fixed for 15 years, or five years to life, is that right, that is, the statutory term was 5 years to life, and was fixed for 15 years for the Parole Board. A. I got out in less than five years.

Q. How were you released from San Quentin? A. I was paroled to the Philippines.

Q. As a matter of fact you were paroled to the Immigration Service for deportation, were you not? A. Yes.

Q. And you were deported? A. Yes.

Q. Were you accorded a hearing by Immigration Officers while confined at San Quentin? A. Yes, I had a hearing.

Q. And it was after that hearing you were taken from San Quentin and placed aboard a ship and removed from the United States by the Immigration Service? A. Yes.

Q. Do you recall when you were taken from San Quentin and placed aboard the ship? A. Yes, that was on the 'President Coolidge.'

Q. In what year was that? A. In 1940.

Q. I show you at this time the Warrant of Deportation issued on the 29th day of August, 1938, on Central Office File No. 55972/550, San Francisco number 12020/28134, wherein it is directed that Adrian Llanos or Adriana Llano or Adrian Llanos who entered the United States at Astoria, Oregon, on the SS. 'West Hixton' on the 4th day of September, 1926, is subject to deportation under Section 19 of the Immigration Act of February 5, 1917, being subject thereto under the following provisions of law, to wit: The Act of 1917, in that he had been sentenced, subsequent to May 1, 1917, to imprisonment more than once for a term of one year or more for the commission subsequent to entry of a crime involving moral turpitude, to wit: Petit Larceny; and Burglary, first degree. Executed on the reverse to show "Executed February 14, 1940, ex. SS. 'President Coolidge,' signed William A. Motter, Guard, Deported to Manila, P. I.," and ask you to examine this record and then state if that record relates to you and if that is the charge on which you were deported. (Respondent examines the record and returns it to the Presiding Inspector.) A. Yes.

By Presiding Inspector:

A true copy of the Warrant of Deportation which has been identified and shown to have been executed, will be made a part of your record of hearing, and marked Exhibit 18.

Presiding Inspector to Respondent:

Q. Now, as I understand from the record, a hearing was held at San Quentin while you were confined there, is that right? A. Yes. * * *”

As stated before, the primary question involved is whether or not a recantation in the same proceedings before the same Tribunal at approximately the same time constitutes perjury.

In the case of *United States v. Norris*, 300 U. S. 564, at page 576, the Supreme Court of the United States in an opinion written by Mr. Justice Roberts stated as follows:

“As will appear by scrutiny of the cases cited in Note No. 1, the laws of the Federal Courts have not dealt with the question often and, while their opinions may not be entirely consonant, it may be said that they preponderate against the respondent’s contention.”

The facts in the case of *United States v. Norris, supra*, can be distinguished from those in the within case in that in the *Norris* case the appellant testified before the Grand Jury on one day and recanted his testimony on the next day. His conviction was affirmed by the Supreme Court.

The only cases which support the *Norris* decision are the cases of *United States v. Hirsch*, 136 F. 2d 976 (1943), which case can be distinguished by reason of the fact that the testimony alleged to be perjurious was given on June 12, 1942 and recantation took place on October 2, 1942. The case of *In re Schnable*, 61 Fed. Supp. 386 (1945), is not in point inasmuch as the only question involved was whether or not there was a fraud perpetrated in an application in a bankruptcy hearing.

In this case the perjurious statements were made on August 8, 1944 and a recantation was made on September 21, 1944. From a perusal of the above authorities, it is readily seen that in each decision the Court was not confronted with an immediate retraction but in each case there was a material difference of time between the making of the alleged perjurious statement and the recantation.

The case of *People v. Gillette*, 126 App. Div. 665, 111 N. Y. Supp. 133, states as follows:

“Immediately thereafter and without leaving the witness stand, he stated that he had received from time to time from certain officers of the Insurance Company . . .”

Mr. Justice McLaughlin speaking for the Court, stated as follows:

“But I do not choose to rest my conclusion on this ground alone. Even if it assumed that the answers were false and made with the intention of misleading or deceiving, an indictment for perjury could not be predicated thereon, inasmuch as immediately thereafter he fully explained the nature of the account and the source from which the fund came.

“A judicial investigation or trial has for its sole object the ascertainment of the truth that justice may be done. It holds out every inducement to a witness to tell the truth by inflicting severe penalties upon those who do not. This inducement would be destroyed if a witness could not correct a false statement except by running the risk of being indicted and convicted for perjury.”

This is the nearest case in factual points that counsel have been able to find.

The above case was noted and approved but the Court, after an analysis of the facts, found that the cases were not similar.

The law encourages the correction of an erroneous and even intentionally false statement on the part of a witness and perjury will not be predicated on such statements when the witness, *before the submission of the case fully corrects his testimony.*

People v. Brill, 100 Misc. Rep. 92, 165 N. Y. Supp. 65.

Wherefore appellant prays for reversal of the judgment, with instructions to the trial court to acquit said appellant.

Respectfully submitted,

DONALD KOLTS,

ORAL R. FINCH,

Attorneys for Appellant.

No. 12137

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ADRIANO LLANOS SENARILLOS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

JAMES M. CARTER,
United States Attorney;

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FILED

JUN 30 1949

L. P. O'BRIEN,
CLERK

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No. 12137

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ADRIANO LLANOS SENARILLOS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

Jurisdictional Statement.

The offense in this case was charged in the indictment pursuant to the provisions of Title 8, Section 152 of the United States Code [T. 2]. Said indictment was filed on October 6, 1948 [T. 3]. The District Court had jurisdiction of the cause under Title 18, Section 3231, effective September 1, 1948, which confers on the District Courts original jurisdiction of "all offenses against the laws of the United States."

The offense charged was committed in the County of Los Angeles, State of California [T. 2]. On the 25th day of October, 1948, the appellant appeared before the District Court for the Central Division of the Southern District of California for arraignment and plea [T. 3], and entered a plea of not guilty [T. 4]. Thereafter on No-

vember 26, 1949, the cause was tried by the Court [T. 5, 6] pursuant to a waiver of jury signed by appellant on said date and filed on November 28, 1948 [T. 4, 5]. The appellant was found guilty of the offense alleged in the indictment and on December 20, 1948, was sentenced [T. 7, 8]. A Notice of Appeal was filed on December 20, 1948 [T. 8, 9], and the appeal perfected thereafter [T. 9, 10, 11, 12, 13].

This Court has jurisdiction under the provisions of Title 28, Section 1291 of the United States Code.

Statement of Facts.

Previous to April 20, 1948, the appellant filed with the Immigration and Naturalization Service [T. 33] Service Form I-256, entitled, Submission to Deportation Process and Application for Suspension of Deportation, and Form I-55, entitled, General Information Form [T. 15, 34, 35]. Therefore, pursuant to the provisions of 8 C. F. R. 150.10, a warrant of arrest was issued for the appellant by United States Immigrant Inspector Lewis A. Denny [T. 15, 33]. On April 20, 1948, a hearing was held to determine whether the Attorney General would exercise his discretion to suspend deportation of the appellant [T. 15, 33]. Presiding Inspector Denny administered the oath to the appellant [T. 16, 34]. Subsequently, during the course of that hearing, the appellant testified that he had never lived in the United States before May of 1945, that he had never been arrested and deported out of the United States and that he had never been arrested and convicted of any crimes either here or in the Philippine Islands, or elsewhere [T. 46]. However, shortly after he so testified, he was asked to examine a certain Federal Bureau of Investigation record, Form T-2, which related to one Eddie

Sinarillos, also known as Adrian Llanos, Adrian S. Llanos, Adie Llanos Sikirillos and other names [T. 47], and other documents which indicated that he had been convicted in Los Angeles, California and Portland, Oregon of the crime of burglary. It was further revealed that in 1937 he had been imprisoned in San Quentin on a sentence of five years to life [T. 47, 48, 49, 50, 51]. When he examined these papers he admitted that they related to him and the facts contained therein were his record [T. 27, 29, 47].

When the above mentioned warrant of arrest had been served on the appellant by Inspector Denny, he was fingerprinted, and these fingerprints were submitted to the Federal Bureau of Investigation. In response, the said Form T-2 came back showing his record of arrests [T. 21]. Thus the appellant, through the fingerprints, was definitely proved to be the same person as described in the Federal Bureau of Investigation file.

The appellant further admitted in that hearing that after he was released from San Quentin he was paroled to the Immigration Service for deportation. Thereafter, he was deported on or about February 7, 1940, pursuant to a Warrant of Deportation issued on the 29th day of August, 1938. This admission came after he inspected said Warrant of Deportation and Form 535, entitled, Description of Person Deported, handed to him by Inspector Denny [T. 51, 52, 53]. It also developed during the trial of this case that before the hearing of April 20, 1948 took place, he had been examined in Manila by the American Army Consul in May, 1945, by the immigration officials upon his arrival in Hawaii, and again by the immigration officials in San Francisco and on those three occasions he made the same false statements upon which this indictment is predicated [T. 28, 29].

Question Involved.

Whether or not correction of false testimony in the same hearing in which it was uttered will expunge the witness of perjury.

Argument.

The only question involved in this appeal is whether or not correction of false testimony in the same hearing in which it was uttered will expunge the witness of perjury. The recognized leading case on this subject is *U. S. v. Norris*, 300 U. S. 564. In that case the defendant testified falsely before a Senate Sub-Committee. After the conclusion of his testimony, the Sub-Committee adjourned until the following day when several other witnesses were examined. The defendant was present and after hearing one of the witnesses testify he asked and was granted permission to return to the stand. He then told the truth about the matter under investigation. Thereafter, he was indicted for perjury under Section 125 of the Criminal Code and convicted by the District Court. The Court of Appeals reversed the conviction and the case went up to the Supreme Court on certiorari. In reversing the decision of the Court of Appeals, the Supreme Court stated:

“We come to the substantial question which moved us to grant the writ of certiorari. * * * The respondent admitted he gave intentionally false testimony on September 22d. His recantation on the following day cannot alter this fact. He would have us hold that so long as the cause or proceeding in which false testimony is given is not closed, there remains a *locus poenitentiae* of which he was entitled to and did avail himself. The implications and results of such a doctrine prove its unsoundness. Perjury is an obstruction of justice; its perpetration well may af-

fect the dearest concerns of the parties before a tribunal. Deliberate material falsification under oath constitutes the crime of perjury, and the crime is complete when a witness's statement has once been made. It is argued that to allow retraction of perjured testimony promotes the discovery of the truth and, if made before the proceeding is concluded, can do no harm to the parties. The argument overlooks the tendency of such a view to encourage false swearing in the belief that if the falsity be not discovered before the end of the hearing it will have its intended effect, but, if discovered, the witness may purge himself of crime by resuming his role of witness and substituting the truth for his previous falsehood. It ignores the fact that the oath administered to the witness calls on him freely to disclose the truth in the first instance and not to put the court and the parties to the disadvantage, hindrance, and delay of ultimately extracting the truth by cross-examination, by extraneous investigation or other collateral means."

The court then went on to discuss the authorities which the respondent set forth to support his position. Among the cases which the court refused to follow was *People v. Gillette*, 126 App. Div. 665, 111 N. Y. Supp. 333, which the appellant in this case has cited in his opening brief. The court concluded as follows:

"The plain words of the statute and the public policy which called for its enactment alike demand we should hold that the telling of a deliberate lie by a witness completes the crime defined by the law. This is not to say that the correction of an innocent mistake, or the elaboration of an incomplete answer, may not demonstrate that there was no wilful intent to swear falsely. We have here no such case."

A careful scrutiny of the law reviews reveals that the unanimous opinion among the writers dealing with the subject is that the decision of the *Norris* case covers the situation where false testimony is immediately retracted.

In 23 *Va. Law Review*, page 947, this opinion was expressed as follows:

"The court in the instant case refused to extend the rule that immediate correction of false testimony will condone the crime. The result seems to be a sound application of the plain words of the statute and of public policy which demands that the crime of perjury be complete on giving of the false testimony and nothing thereafter can alter the situation."

In 51 *Harvard Law Review*, 155-156, the writer stated that the decisions in certain cases including *People v. Gillette*, *supra*, and *Brannen v. State*, 94 Fla. 656, 114 So. 429, were grounded on the assumption that a witness will thereby be more often induced to correct false testimony.

"Since, however, the perjurer will not usually retract unless his false testimony has been first demonstrated, retractions thus induced will be of little value in furthering the administration of justice. * * *

"Certain courts * * * have argued that the truth will be more often produced and the dignity of the court better protected by denying the escape of recantation to any perjurer who has deliberately misled the court. *Loubriel v. U. S.*, 9 F. 2d 807, and *Martin v. Miller*, 4 Mo. 47 (1835). Although the facts of the *Norris* case can be distinguished from the *Gillette* case, *the opinion of the Norris case is sufficiently broad to deny effect to any recantation.* In adopting this view, the court has followed the general

principle that prosecution for a crime may not be averted by subsequent reparation. *Savitt v. U. S.*, 59 F. 2d 541, C. C. A. 3rd (1932).” (Italics supplied.)

In 17 *Nebraska Law Bulletin*, 224 and 225, we again find the conclusion announced in the two previous articles concerning the decision of the *Norris* case:

“The conviction, however, is entirely in keeping with the established and traditional stand taken upon any criminal act, namely, that once the deed is done the offense is complete and retraction and restitution will neither nullify the act or excuse the actor. *Savitt v. United States*, 59 Fed. 2d 541. Perjury is no different from any other crime in this respect. The crime is complete once the witness perjured himself and retraction even during the same trial will not obviate the charge. *Martin v. Miller* (1935), 4 Mo. 47, 28 Am. Dec. 342; *Seymour v. United States*, C. C. A. 8th (1935), 77 F. 2d 577.”

See also, 76 *University of Pennsylvania Law Review* 751, for a criticism of *Brannen v. State*, *supra*, and the rule that the crime of perjury is condoned if correction is made immediately and as a part of the same examination.

In the recent case of *Meyers v. United States*, 171 F. 2d 800, 805 (1948), (writ of cert. den. Feb. 14, 1949), the Court of Appeals for the District of Columbia stated simply:

“The crime of perjury is not removed, the Supreme Court has said, by the fact that the perjurer later in the proceedings tells the truth; that is to say, retraction following perjury does not destroy its criminality. *United States v. Norris* * * *.”

In his opening brief at page 21, the appellant states that the case *In re Schnable*, 61 Fed. Supp. 386 (1945), is not in point. However, at page 395 the court in that case adopted the findings of fact, conclusions of law, and memorandum of a referee in bankruptcy which considered the subject of recantation and held as follows:

“The filing of the amendment in this case does not expunge the original offense.

“In *United States v. Norris*, * * * the court held that a witness who commits perjury cannot purge himself of the offense by subsequently recanting and that the crime of perjury is complete when a false statement has once been made.

“In *United States v. Margolis*, 3 Cir., 138 F. 2d 1002, the court held that if the bankrupt’s original answer at a hearing before a referee in a bankruptcy proceeding was knowingly false, the crime of making a false oath in a bankruptcy proceeding was complete and it could not be expunged by a subsequent recanting.”

In this case, the false statements were not made unintentionally or mistakenly but were deliberately and wilfully uttered [T. 27, 29, 30]. In fact, the appellant also admitted making the same false statements at an earlier time to the American Army Consul in Manila, to immigration officials upon his arrival in Hawaii and again when he was examined in San Francisco [T. 28, 29]. He did not correct his story in Manila, Hawaii, or in San Francisco and the only reason he admitted the truth before Inspector Denny was because he was confronted with documents which proved the falsity of his testimony [T. 23, 24, 47, 48, 49, 50, 51, 52].

In *People v. Gillette, supra*, the court advanced the unsound doctrine that the inducement to tell the truth would be destroyed if the witness could not correct a false statement in the same hearing except by running the risk of being indicted for perjury. But that holding is not an inducement to tell the truth; on the contrary, it is an inducement *not* to tell the truth. As pointed out in 51 *Harvard Law Review* 165-166, *supra*, a perjurer will not usually retract unless his false testimony has been demonstrated, as is the situation in *United States v. Norris, supra*, and in this case. What merit does such a retraction have, when the witness is confronted with the evidence which completely refutes his testimony. There is nothing else the witness can do but recant. The above mentioned article further calls our attention to the practical aspects of the rule in the *Norris* case:

“The harshness of this rule to one who recants voluntarily and before his lie is revealed will be mitigated in practice by the discretion of prosecutors and judges and well known reluctance of juries to convict of perjury unless a culpability is clear.”

At present in our courts of law, it appears that perjury is so common that it is almost taken for granted. It has brought some courts into such disrepute that many people have lost faith in them. Instead of winking solicitously at a practice which strikes at the very foundations of our democratic judicial system, it is time that we take to task those who consider the oath lightly. *We cannot afford to pamper the perjurer.* He must realize that it is his duty to tell the truth in the first instance when testifying under oath and that no subsequent retraction after being caught in his lie will cleanse him of the crime. We can offer no better inducement to tell the truth.

Conclusion.

It is respectfully submitted that the appeal is without merit and that the judgment of the District Court should be affirmed.

Respectfully submitted,

JAMES M. CARTER,
United States Attorney;

ERNEST A. TOLIN,
Chief Asst. U. S. Attorney;

NORMAN W. NEUKOM,
Asst. U. S. Attorney,
Chief of Criminal Division;

LEILA F. BULGRIN,
Asst. U. S. Attorney,
Attorneys for Appellee.

No. 12139

United States
Court of Appeals
for the Ninth Circuit

ANGEL L. PACK,

Appellant,

vs.

UNITED STATES OF AMERICA and LILLY
PACK,

Appellees.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

FILED

FEB - 4 1949

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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For Appellee Lilly Pack:

CAMERON & PERKINS,
324 Elm Ave.,
Long Beach 12, Calif. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States
for the Southern District of California,
Central Division

No. 7651-BH

ANGEL L. PACK,

Plaintiff,

vs.

UNITED STATES OF AMERICA and LILLY
PACK,

Defendants.

COMPLAINT ON INSURANCE CONTRACT
ISSUED BY THE UNITED STATES
(With Demand for Trial by Jury)

Plaintiff complains of defendants and alleges:

I.

That this action is founded upon the National Service Life Insurance Act of 1940, as amended (Title 38, Chapter 13, U.S. Code) and Secs. 445 and 551 of Title 38, U.S. Code.

II.

That while Clyde A. Pack was a member of the armed forces of the defendant United States of America, he applied for and there was granted to him by said defendant \$10,000 of National Service Life Insurance effective March 6, 1944, under certificate N-15,813,803, for which he designated the defendant, Lilly Pack, his mother, as beneficiary, without the consent of plaintiff. [2]

III.

That said Clyde A. Pack died on or about June 11, 1945, and that at all times from and after the aforesaid contract of insurance was granted and issued, as aforesaid, said decedent paid all of the premiums thereon in the amounts and at the times as provided by law and the terms of said contract.

IV.

That plaintiff and the deceased insured, Clyde A. Pack, were married in Santa Ana, California, on or about June 24, 1932, and that at all times thereafter plaintiff and said insured were and continued to be husband and wife until such status was terminated by the death of said insured. That there were two children as the issue of said marriage, to-wit: Joanne Pack and Dennis Pack, and that both of them have survived their said father.

V.

That at and prior to June 24, 1932, and at all times thereafter during his lifetime, the aforesaid Clyde A. Pack was a resident of the State of California, and that plaintiff at all such times was a resident of said State and now is a resident thereof and of the Southern District, Central Division of said State and a resident of and domiciled in the County of Los Angeles thereof.

VI.

That plaintiff is informed and believes and upon such information and belief alleges that subsequent to March 6, 1944, and during his lifetime, said Clyde A. Pack changed the beneficiary under all of

the aforesaid insurance to plaintiff and designated plaintiff the sole beneficiary thereof.

VII.

That the defendant Lilly Pack resides in Kirksville, Missouri, and that she claims an interest in and to said [3] insurance contract adverse to plaintiff, but that each and every claim of said defendant Lilly Pack is wholly without right and subordinate to the claim and interest of plaintiff in and to the whole of the said insurance and the entire proceeds therefrom.

VIII.

That heretofore, and subsequent to the death of the aforesaid insured, plaintiff made a written claim and demand to and upon the defendant United States of America and to the Veterans Administration thereof, for payment of the proceeds of both of said contracts and the aforesaid entire insurance, and that thereafter, and prior to the commencement of this action, to-wit, on August 25, 1947, said defendant and its Veterans Administration, in writing, disagreed with plaintiff and refused to pay said claim or any part thereof, and that a disagreement exists between plaintiff and said defendant as to her claim, as aforesaid.

IX.

That plaintiff has employed Sylvester Hoffman & Irving G. Bishop, attorneys at law, admitted to practice before this Court, and members of the State Bar of California, to bring and prosecute this action and has incurred an obligation to pay her

said attorneys a reasonable attorneys' fee, but not to exceed the amount and payable in the manner as provided by Title 38, Sec. 551, U. S. Code.

For a further, separate and second cause of action, plaintiff complains of defendants, and each and both of them, and alleges:

I.

That plaintiff hereby repeats each and every of the allegations in paragraphs I, II, III, IV, V, VII, VIII [4] and IX of here first cause of action and incorporates each and every of said allegations, by reference, in this, her second cause of action.

II.

That all of the premiums paid by said insured, to-wit: Clyde A. Pack, were paid from and with community property of said insured and plaintiff.

For a further, separate and third cause of action, plaintiff complains of defendant Lilly Pack, and alleges:

I.

That plaintiff hereby repeats each and every of the allegations in paragraphs I, II, III, IV, V, VII, VIII and IX of her first cause of action and incorporates each and every of said allegation, by reference, in this, her third cause of action.

II.

That all of the premiums paid by said insured, to-wit: Clyde A. Pack, were paid from and with community property of said insured and plaintiff.

III.

That by reason of the foregoing facts, plaintiff became the owner of a present, existing and vested

interest in and to one-half of said insurance from the issuance and effective date thereof and in and to one-half of all the proceeds therefrom or payable thereunder and that in the event any of such proceeds have been paid to the defendant Lilly Pack, she holds one-half of the same in trust for plaintiff and if she receives any such proceeds thereafter, she will receive and hold one-half thereof in trust for plaintiff, and that as to one-half of all such proceeds which said defendant has or may hereafter receive, [5] such one-half is and will be the property of plaintiff, without any right, title or estate therein by or in the defendant Lilly Pack other than as trustee for plaintiff.

Wherefore plaintiff prays judgment:

1. Against the defendant United States of America, for all installments of insurance benefits which have accrued and which may hereafter be or become payable thereunder;

2. Determining that the insured, subsequent to the issuance of said insurance, designated plaintiff as beneficiary;

3. Determining that defendant Lilly Pack has no right, title, interest or estate in or to said insurance, whatsoever, or in or to any part thereof;

4. Determining, in the event that it is held that the insured at no time designated plaintiff as beneficiary thereunder, that said insurance was the community property of the plaintiff and said insured, and awarding plaintiff one-half of said insurance, requiring defendant Lilly Pack to account for any of the proceeds heretofore paid to her and

to deliver, forthwith, one-half thereof to plaintiff; and if such relief cannot be obtained, then that it be determined that Lilly Pack is the trustee for plaintiff as to one-half of all of the proceeds heretofore received by said defendant and which she may hereafter receive and requiring said defendant Lilly Pack to forthwith deliver said one-half of all such proceeds to plaintiff, forthwith upon the receipt thereof, and that a receiver be appointed or other appropriate relief be granted to enforce the terms of such judgment and that said defendant be required to give adequate security for the faithful performance of said trust; [6]

5. Determining and fixing her attorney's fees, not to exceed 10% of the amount recovered and to be paid under the judgment to be rendered herein, to be paid in the manner as provided by law;

6. And for all other and further relief as may be proper in the premises.

IRVING G. BISHOP &
SYLVESTER HOFFMAN,
By /s/ SYLVESTER HOFFMAN,
Attorneys for Plaintiff.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Sept. 26, 1948. [7]

[Title of District Court and Cause.]

ANSWER

Now comes the defendant United States of America, by Ernest A. Tolin, Chief Assistant United

States Attorney in and for the Southern District of California, Clyde C. Downing, Assistant United States Attorney, and Robert Komins, Assistant United States Attorney, and for its answer to the complaint filed herein says:

ANSWER TO FIRST CAUSE OF ACTION

I.

The defendant admits the allegations contained in paragraphs numbered I, II, III and IV of plaintiff's complaint.

II.

For want of knowledge or information sufficient to form a belief as to the truth thereof, defendant denies the allegations contained in paragraph numbered V of the plaintiff's complaint.

III.

The defendant denies the allegations contained in paragraph numbered VI of the plaintiff's complaint. [9]

IV.

The defendant denies the allegations contained in paragraph numbered VII of the plaintiff's complaint, except to admit that Lilly Pack is the mother of the insured, Clyde A. Pack, and that she has an interest in the proceeds of insurance involved in this action and that such interest is adverse to the plaintiff herein.

V.

The defendant denies the allegations contained in paragraph numbered VIII except to admit that

the plaintiff made claim upon the United States of America for the benefits of the policy of insurance involved in this action, and that the claim of the plaintiff was duly denied by the Veterans' Administration by letter dated August 25, 1947.

VI.

The defendant denies the allegations contained in paragraph numbered IX of the plaintiff's complaint except to admit that in the event of plaintiff's recovery herein the Court, in its discretion, may award a reasonable attorney's fee to counsel for the plaintiff under Section 551, Title 38, U.S.C.A., but not to exceed 10% of the amount received by the judgment.

ANSWER TO SECOND CAUSE OF ACTION

I.

The defendant, in answer to paragraph numbered I of the Second Cause of Action of the complaint, repeats and realleges the admissions and denials made in defendant's answer to the plaintiff's First Cause of Action and numbered paragraphs I, II, III, IV, V, VII, VIII, IX, with the same force and effect as though the same were herein fully and at length set forth.

II.

The defendant denies the allegations contained in paragraph numbered II of plaintiff's Second Cause of Action.

ANSWER TO THIRD CAUSE OF ACTION

I.

The defendant, in answer to paragraph numbered I of the Third Cause of Action of the complaint, repeats and realleges the admissions and denials made [10] in defendant's answer to plaintiff's First Cause of Action and numbered paragraphs I, II, III, IV, V, VII, VIII and IX with the same force and effect as though the same were herein fully and at length set forth.

II.

The defendant denies the allegations contained in paragraph numbered II of the plaintiff's Third Cause of Action.

III.

The defendant denies the allegations contained in paragraph numbered III of the plaintiff's Third Cause of Action.

Wherefore, the defendant prays that upon hearing the Court:

1. Adjudge whether this defendant is obligated to pay the proceeds of policy No. N-15,813,803 to the plaintiff. Angel L. Pack, or to the defendant, Lilly Pack.

2. Discharge the defendant, United States of America, from any and all liability on policy No. N-15,813,803, except to the person who shall be adjudged to be entitled to receive such insurance benefits.

3. Award to the defendant, United States of America, its costs and such other relief as may to the Court seem proper.

ERNEST A. TOLIN,
Chief Assistant U. S. Attorney

CLYDE C. WODNING and
ROBERT KOMINS,
Assistant U. S. Attorneys

By /s/ ROBERT KOMINS,
Attorneys for Defendant United States of America.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed March 19, 1948. [11]

[Title of District Court and Cause.]

ANSWER AND CROSS COMPLAINT

Comes now the defendant, Lilly Pack, and for answer to plaintiff's complaint admits, denies, and alleges as follows:

I.

Admits paragraph I of plaintiff's complaint.

II.

Admits paragraph II of plaintiff's complaint, excepting that this defendant denies that the designation of this defendant as beneficiary under said certificate of insurance was without the consent of the plaintiff, and alleges that said Clyde A. Pack designated this defendant, his mother, as beneficiary with the consent of plaintiff.

III.

Admits paragraph III of plaintiff's complaint.

IV.

Admits paragraph IV of plaintiff's complaint.

V.

Answering paragraph V of plaintiff's complaint this defendant alleges that she has no information or belief sufficient to enable her to answer the allegation contained in said paragraph V to the effect that at and prior to June 24, 1932, and at all times thereafter during his lifetime, the said Clyde A. Pack was a resident of the State of California, and basing her denial on said grounds this defendant denies generally and specifically said allegation and the whole thereof.

VI.

Denies generally and specifically the allegations of paragraph VI of plaintiff's complaint.

VII.

Answering paragraph VII of plaintiff's complaint, this defendant admits that she resides in Kirksville, Missouri, and that she claims an interest in and to said insurance contract adverse to plaintiff; denies generally and specifically each and every other allegation in said paragraph VII contained.

VIII.

Admits the allegations of paragraph VIII of plaintiff's complaint.

IX.

Answering paragraph IX of said complaint, this defendant alleges that she has no information or

belief sufficient to enable her to answer the allegations therein contained, and basing her denial on said grounds this defendant denies generally and specifically the allegations contained in paragraph IX of plaintiff's complaint.

Answering the Second Cause of Action contained in plaintiff's complaint, this defendant admits, denies, and alleges as follows: [14]

I.

That this defendant hereby repeats each and every of the denials and admissions to the matters contained in paragraphs I, II, III, IV, V, VII, VIII, and IX of plaintiff's first cause of action, and incorporates each and every of said denial and admissions by reference in this her answer to plaintiff's second cause of action.

II.

Denies generally and specifically the allegations of paragraph II of plaintiff's second cause of action.

Answering the third cause of action contained in plaintiff's complaint, this defendant admits, denies, and alleges as follows:

I.

That this defendant hereby repeats each and every of the denials and admissions to the matters contained in paragraphs I, II, III, IV, V, VII, VIII, and IX of plaintiff's first cause of action, and incorporates each and every of said denials and admissions by reference in this her answer to plaintiff's third cause of action.

II.

Denies generally and specifically the allegations contained in paragraph II of plaintiff's third cause of action.

III.

Denies generally and specifically the allegations contained in paragraph III of plaintiff's third cause of action. [15]

For a cross complaint against the plaintiff, Angel L. Pack, and the United States of America, this defendant and cross complainant, Lilly Pack, complains and alleges:

I.

That the cause of action contained in this cross complaint is founded upon the National Service Life Insurance Act of 1940, as amended (Title 38, Chapter 13, U.S. Code) and Secs. 445 and 551 of Title 38, U.S. Code.

II.

That while Clyde A. Pack was a member of the armed forces of the cross defendant, United States of America, he applied for and there was granted to him by said cross defendant, \$10,000.00 of National Service Life Insurance effective March 6, 1944, under certificate N-15,813,803, for which he designated this cross complainant, Lilly Pack, his mother, as beneficiary.

III.

That said Clyde A. Pack died on or about June 11, 1945, and that at all times from and after the aforesaid contract of insurance was granted and issued, as aforesaid, said decedent paid all of the

premiums thereon in the amounts and at the times as provided by law and the terms of said contract.

IV.

That the cross complainant, Lilly Pack, resides in Kirkesville, Missouri, and the cross defendant, Angel L. Pack, resides in Los Angeles County, California, and said cross defendant Angel L. Pack, claims an interest in and to said insurance contract adverse to this cross complainant, but that each and every claim of cross defendant, Angel L. Pack, is wholly without right and subordinate to the claim and interest of this cross complainant in and to the whole of the said insurance and the entire proceeds therefrom.

V.

That cross complainant has employed W. E. Cameron and [16] Dean Perkins, comprising the law firm of Cameron & Perkins, Attorneys at Law, admitted to practice before this Court, and members of the State Bar of California, to bring and prosecute this cross complaint and has incurred an obligation to pay her said attorneys a reasonable attorneys' fees, but not to exceed the amount and payable in the manner as provided by Title 38, Sec. 551, U. S. Code.

Wherefore, this defendant and cross complainant prays judgment as follows:

1. Against the cross defendant, United States of America, for all installments of insurance benefits which have accrued and which may hereafter be or become payable thereunder;

2. Determining that the plaintiff and cross defendant, Angel L. Pack, has no right, title, interest, or estate in or to said insurance whatsoever, or in or to any part thereof;

3. Determining and fixing cross complainant's attorneys' fees, not to exceed 10% of the amount recovered and to be paid under the judgment to be rendered herein, to be paid in the manner as provided by law;

4. And for all other and further relief as may be proper in the premises.

W. E. CAMERON AND
DEAN PERKINS,

By /s/ W. E. CAMERON,
Attorneys for Defendant and Cross Complainant,
Lilly Pack.
(Duly Verified.)

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed May 11, 1948. [17]

[Title of District Court and Cause.]

ANSWER OF PLAINTIFF TO CROSS CLAIM
OF DEFENDANT LILLY PACK

Comes now Angel L. Pack, plaintiff herein, and answering the cross-claim of defendant Lilly Pack (which said cross-claim is erroneously designated as a "cross-complaint"), and admits, denies and alleges:

I.

Answering paragraph II of said cross-claim, plaintiff alleges that subsequent to the designation

of defendant Lilly Pack, and during his lifetime, the insured, Clyde A. Pack, designated his wife, plaintiff Angel L. Pack, as beneficiary, and that she was the last designated beneficiary prior to his death.

II.

Answering paragraph IV of said cross-claim, plaintiff admits that cross-claimant Lilly Pack resides in Kirksville, Missouri, and that the plaintiff and cross-defendant, Angel L. [19] Pack, resides in Los Angeles County, California, and denies generally and specifically, each and every, all and singular the allegations of said paragraph IV not herein expressly admitted.

III.

Further answering said cross-claim, plaintiff alleges that she (the plaintiff) is entitled to all the proceeds under said insurance to the exclusion of the cross-claimant and defendant, Lilly Pack. Plaintiff hereby adopts and repeats each and all of the allegations of her complaint as part of this answer.

Wherefore, plaintiff and cross-defendant Angel L. Pack prays that cross-claimant and defendant Lilly Pack take nothing and that this action be dismissed as to her.

IRVING G. BISHOP &
SYLVESTER HOFFMAN,
By /s/ SYLVESTER HOFFMAN,
Attorneys for Plaintiff.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed May 12, 1948. [20]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT UNITED STATES
OF AMERICA TO CO-DEFENDANT'S
CROSS-CLAIM

(Designated as Cross-Complaint)

Now comes the defendant United States of America, by Ernest A. Tolin, Chief Assistant United States Attorney in and for the Southern District of California, Clyde C. Downing and Robert Komins, Assistant United States Attorneys in and for the Southern District of California, and for its answer to the co-defendant's Cross-Claim (designated as Cross-Complaint) says:

I.

This defendant admits the allegations contained in paragraphs I, II, III and IV of said Cross-Claim.

II.

This defendant denies the allegations contained in paragraph V of said Cross-Claim, except to admit that in the event of the defendant Lilly Pack's recovery herein, the Court, in its discretion, may award a reasonable attorneys' fee to counsel for said defendant under Section 551, Title 38 U.S.C.A., but not to exceed 10% of the amount received by the judgment.

III.

This defendant stands ready and willing to pay the proceeds of the [22] National Service Life Insurance policy sued upon herein to such person

or persons who may be found entitled thereto, but because of the conflicting claims with respect to said proceeds, it cannot safely do so without the assistance of this Court.

IV.

In further answer to the co-defendant's Cross-Claim (designated as Cross-Complaint), this defendant adopts the prayer for relief in its answer to the plaintiff's complaint.

ERNEST A. TOLIN,
Chief Assistant U. S. Attorney,
CLYDE C. DOWNING and
ROBERT KOMINS,
Assistant U. S. Attorneys,
By /s/ ROBERT KOMINS,
Attorneys for Defendant
United States of America.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed June 21, 1948. [23]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above entitled cause came on regularly for trial on the 1st day of September, 1948, before the Honorable Ben Harrison, Judge of the above entitled Court, sitting without a jury, a jury having been expressly waived; Sylvester Hoffman, of Irving G. Bishop and Sylvester Hoffman, appearing as counsel for plaintiff; Ernest A. Tolin, Chief As-

sistant U. S. Attorney, Clyde C. Downing and Robert Komins, Assistant U. S. Attorneys, by Robert Komins, Assistant U. S. Attorney, appearing as counsel for defendant, United States of America, and W. E. Cameron of the law firm of Cameron & Perkins, which firm is composed of W. E. Cameron and Dean Perkins, appearing as counsel for Lilly Pack, defendant and cross-claimant, and the Court having heard and considered all the stipulations and admissions concerning evidence and proofs entered into and made by the respective parties and being fully advised in the premises, and the cause having been submitted to the Court for decision, the Court now makes its Findings of Fact and Conclusions of Law as follows: [26]

FINDINGS OF FACT

The Court finds as follows:

I.

That Clyde A. Pack, also known as Clyde Albert Pack, deceased, was born March 25, 1910; that plaintiff, Angel L. Pack was born on June 5, 1909; that defendant and cross-claimant, Lilly Pack, was born on December 11, 1883.

II.

That plaintiff Angel L. Pack is the widow of Clyde A. Pack, deceased; that defendant and cross-claimant, Lilly Pack, is the mother of said Clyde A. Pack, now deceased, and she resides in the City of Kirksville, State of Missouri.

III.

That said Clyde A. Pack enlisted in the United States Marine Corps on February 25, 1944, and was continuously in said United States Marine Corps service from the time of his acceptance therein in said month of February, 1944, until his death on or about June 11, 1945.

IV.

That this action is founded upon the National Service Life Insurance Act of 1940, as amended (Title 38, Chapter 13, U.S. Code) and Secs. 445 and 551 of Title 38, U.S. Code.

V.

That while Clyde A. Pack was a member of the armed forces of the defendant United States of America, he applied for and there was granted to him by said defendant \$10,000 of National Service Life Insurance effective March 6, 1944, under certificate N-15,813,803, for which he designated the defendant, Lilly Pack, his mother, as beneficiary, without the consent of plaintiff; that his mother, the defendant Lilly Pack, was named beneficiary at his request and no contingent beneficiary was named. [27]

VI.

That said Clyde A. Pack died on or about June 11, 1945, and that at all times from and after the aforesaid contract of insurance was granted and issued, said decedent paid all of the premiums thereon in the amounts and at the times as provided by law and the terms of said contract.

VII.

That plaintiff and the deceased insured, Clyde A. Pack, were married in Santa Ana, California, on or about June 24, 1932, and that at all times thereafter plaintiff and said insured were and continued to be husband and wife until such status was terminated by the death of said insured. That there were two children as the issue of said marriage, to-wit: Joanne Pack and Dennis Pack, and that both of them have survived their said father.

VIII.

That at and prior to June 24, 1932, and at all times thereafter during his lifetime, the aforesaid Clyde A. Pack was a resident of the State of California, and that plaintiff at all such times was a resident of said State and now is a resident thereof and of the Southern District, Central Division of said State and a resident of and domiciled in the County of Los Angeles thereof.

IX.

That said Clyde A. Pack never changed the beneficiary under all or any of the aforesaid insurance to the plaintiff, or to anyone else; that said Clyde A. Pack never designated the plaintiff as a beneficiary thereof; that the said Clyde A. Pack never designated anyone excepting his mother, the said Lilly Pack, as the beneficiary of said insurance.

X.

That the defendant and cross-claimant Lilly Pack resides in Kirksville, Missouri, and she claims an interest in and to said insurance contract adverse

to plaintiff, and each and every claim [28] of Lilly Pack is wholly right and is not subordinate to the claim and interest of plaintiff, and the said Lilly Pack is rightfully entitled to the whole of the said insurance and the entire proceeds therefrom.

XI.

That heretofore, and subsequent to the death of the aforesaid insured, plaintiff made a written claim and demand to and upon the defendant United States of America and to the Veterans Administration thereof, for payment of the proceeds of both of said contracts and the aforesaid entire insurance, and that thereafter, and prior to the commencement of this action, to-wit, on August 25, 1947, said defendant and its Veterans Administration, in writing, disagreed with plaintiff and refused to pay said claim or any part thereof, and that a disagreement exists between plaintiff and said defendant as to her claim, as aforesaid.

XII.

That plaintiff has employed Sylvester Hoffman & Irving G. Bishop, attorneys at law, admitted to practice before this Court, and members of the State Bar of California, to bring and prosecute this action and has incurred an obligation to pay her said attorneys a reasonable attorneys' fee, but not to exceed the amount and payable in the manner as provided by Title 38, Sec. 551, U.S. Code.

As Findings of Fact upon plaintiff's second cause of action the Court finds as follows:

I.

The Court makes the same findings of fact as heretofore found upon plaintiff's first cause of action and in response to the allegations contained in paragraphs I, II, III, IV, V, VI, VII, VIII, and IX of said first cause of action.

II.

The Court further finds that all the premiums paid by said [29] insured, Clyde A. Pack, were paid as directed by deceased by deducting the same from his earnings as a member of the United States Marine Corp, which earnings were the community property of the plaintiff and the said deceased, Clyde A. Pack.

As Findings of Fact upon plaintiff's third cause of action the Court finds as follows:

I.

The Court makes the same findings of fact as heretofore found upon plaintiff's first cause of action and in response to the allegations contained in paragraphs I, II, III, IV, V, VI, VII, VIII, and IX of said first cause of action.

II.

The Court further finds that all the premiums paid by said insured, Clyde A. Pack, were paid as directed by deceased by deducting the same from his earnings as a member of the United States Marine Corps, which earnings were the community property of the plaintiff and the said deceased, Clyde A. Pack.

III.

That the plaintiff never became the owner of any interest whatsoever in or to any part of said insurance at any time or at all, or of any part of the proceeds therefrom or payable thereunder; that the defendant, Lilly Pack, does not hold and will not hold any part of the proceeds which she has received or may receive therefrom in trust for the plaintiff, and none of said proceeds to be received by the defendant, Lilly Pack, will be the property of plaintiff, but all proceeds of said insurance will be rightfully the property of the defendant, Lilly Pack, as her own property and free from any trust in favor of the plaintiff or anyone else.

IV.

That the policy of insurance sued upon herein was issued pursuant to the laws of the United States, to-wit, the National [30] Service Life Insurance Act of 1940, as amended, (38 U.S.C.A., Chapter 13, Section 801, et seq.), and that the laws of the United States of America relating to said policy of insurance are paramount with respect to the naming and designating of beneficiaries by an insured thereunder, and with respect to the disposition of the proceeds of said policy of insurance, and that said National Service Life Insurance Act of 1940, as amended, and all regulations promulgated pursuant to the authority granted by said statute, are not affected, modified or controlled by any laws or regulations of the State of California to the contrary, and the said naming of beneficiaries and disposition of the proceeds of said policy of

insurance are not subject to and cannot be controlled or governed by the community property laws or any other law of the State of California.

As Findings of Fact upon the cross-claim of defendant, Lilly Pack, the Court finds:

I.

The Court finds specially that each and all the allegations contained in said cross-claim, erroneously designated cross-complaint, are true and correct.

CONCLUSIONS OF LAW

From the foregoing facts the Court concludes:

I.

That the Court has jurisdiction to hear and determine this case under the provisions of Title 38, U. S. C. A. Sections 445 and 817. [31]

II.

That the residence of the plaintiff, Angel L. Pack, and her deceased husband, Clyde A. Pack, was at all times herein involved, and at the time of his death, in the State of California.

III.

That the disposition of the proceeds or benefits of the policy of insurance sued upon herein, which was issued pursuant to the provisions of the National Service Life Insurance Act of 1940, as amended, (38 U. S. C. A., Chapter 13, Section 801, et seq.), is not subject to and cannot be controlled or governed by the community property laws of the State of California.

IV.

That the community property laws of the State of California cannot and do not change the terms of the policy of insurance sued upon herein, (the contract for which was entered into by the said Clyde A. Pack with the defendant United States of America), and that the proceeds and all benefits of said policy of insurance are payable according to the terms of said contract.

V.

That plaintiff is not entitled to take anything by this action.

VI.

That plaintiff has no right or claim in or to the Insurance Policy sued on herein or in or to any of the proceeds thereof.

VII.

That defendant and cross-claimant Lilly Pack is the legally qualified beneficiary of, and entitled to receive the benefits of, the policy of National Service Life Insurance sued on herein in the sum of \$10,000 on the life of Clyde A. Pack, deceased, less five per cent of such amount which is to be deducted therefrom as attorneys fees. [32]

VIII.

That five per cent of any amounts payable to Lilly Pack by the United States Veterans Administration as proceeds of such policy of National Service Life Insurance be paid to W. E. Cameron and Dean Perkins as attorneys' fees for services

rendered on behalf of said Lilly Pack in the defense of this action.

Let Judgment be entered accordingly.

Dated this 22 day of September, 1948.

/s/ BEN HARRISON,

United States District Judge.

[Endorsed]: Filed Sept. 22, 1948. [33]

In the District Court of the United States in and
for the Southern District of California,
Central Division

No. 7651-BH

ANGEL L. PACK,

Plaintiff,

vs.

UNITED STATES OF AMERICA and
LILLY PACK,

Defendants.

JUDGMENT

The above entitled cause coming on regularly for trial on the 1st day of September, 1948, before the Honorable Ben Harrison, Judge Presiding, the plaintiff appearing by Irving G. Bishop & Sylvester Hoffman by Sylvester Hoffman, her attorneys, and the defendant United States of America appearing by Ernest A. Tolin, Chief Assistant U. S. Attorney, Clyde C. Downing and Robert Komins, Assistant United States Attorneys, by Robert Komins, As-

sistant United States Attorney, and the defendant and cross-claimant, Lilly Pack, appearing by W. E. Cameron and Dean Perkins by W. E. Cameron; trial by jury having been waived; the cause was tried before the Court sitting without a jury, and the Court having heard the evidence therein and the cause having been submitted to the Court for decision, and the Court having heretofore made its findings of fact and conclusions of law, upon said findings and conclusions it is hereby ordered, adjudged and decreed as follows:

1. That plaintiff above named take nothing by her action [35] and that the plaintiff has no right or claim in or to the policy of insurance sued upon herein or in or to any of the proceeds thereof and that Judgment be and the same is hereby rendered in favor of defendants, United States of America and Lilly Pack.

2. That the defendant and cross-claimant Lilly Pack is the legally qualified beneficiary of and entitled to receive, the benefits of the policy of National Service Life Insurance sued on herein in the sum of \$10,000 on the life of Clyde A. Pack, deceased, less five per cent of such amount which is to be deducted therefrom as attorneys' fees.

3. That the United States of America by and through the Veterans Administration pay to Lilly Pack the proceeds of the policy of National Service Life Insurance sued on herein, in the sum of \$10,000 on the life of Clyde A. Pack, deceased, in accordance with the terms and provisions of said policy of insurance, after deducting from each pay-

ment ten per cent thereof as attorneys' fees, which said amounts deducted from each payment as attorneys' fees shall be paid to W. E. Cameron and Dean Perkins, Attorneys at Law, 324 Elm Avenue, Long Beach 12, California, until the sum of \$500.00 has been thus paid, as attorneys' fees for services rendered on behalf of said Lilly Pack in the defense of this action.

Done in open Court this 22 day of September, 1948.

/s/ BEN HARRISON,

United States District Judge.

[Endorsed]: Filed Sept. 22, 1948. [36]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO UNITED STATES
COURT OF APPEALS

Notice is hereby given that Angel L. Pack, the plaintiff above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on September 22, 1948.

Dated: November 19, 1948.

IRVING G. BISHOP &
SYLVESTER HOFFMAN,
By SYLVESTER HOFFMAN,

Attorneys for appellant Angel L. Pack

[Endorsed]: Filed Nov. 19, 1948. [38]

[Title of District Court and Cause.]

STATEMENT OF POINTS

The Appellant states that points upon which she intends to rely on the appeal in this action are as follows:

1. That the evidence is not sufficient to sustain the judgment;

2. That facts found in paragraph X of the Findings of Fact concerning Appellant's First Cause in her Complaint is not supported by and are contrary to the law and to the stipulated facts in this cause;

3. That the facts found in paragraphs III and IV of the aforesaid Findings of Fact, concerning Appellant's Third Count, are not supported by and are contrary to the law and to the stipulated facts in this cause;

4. That the District Court erred in its Conclusions of Law numbered III to VIII, both inclusive, and that each and all [43] of said Conclusions are contrary to the law and to the stipulated facts in this cause;

5. That the District Court erred in finding and adjudicating that Appellant was barred from claiming any interest in the insurance sued upon by virtue of or under her vested rights in such community property;

6. That the District Court erred in failing to find and adjudicate that appellee, Lilly Pack, was estopped from claiming or asserting any interest in and to appellant's vested interest in said insur-

ance, which was the community property of Appellant and the deceased insured;

7. That the District Court erred in not finding and adjudicating that, as between Appellant, Angel L. Pack and Appellee, Lilly Pack, said Appellee held or would hold, as received, one-half of the proceeds from said community property in trust for Appellant; and

8. That the District Court erred in not finding and adjudicating that Appellee, Lilly Pack, should be required to execute a written assignment of one-half of the said community property to Appellant.

SYLVESTER HOFFMAN &
IRVING G. BISHOP,

By SYLVESTER HOFFMAN,
Attorneys for Appellant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Nov. 24, 1948. [44]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 47, inclusive, contain full, true and correct copies of Complaint on Insurance Contract Issued by the United States; Answer of the United States of America; Answer and Cross-Complaint of Lilly Pack; Answer of Plaintiff to Cross-Claim of Defendant Lilly Pack; Answer of United

States of America to Co-Defendant's Cross-Claim; Stipulation and Order Waiving Trial by Jury; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Bond for Costs on Appeal; Statement of Points and Stipulation as to Record which, together with copy of reporter's transcript of proceedings on September 1, 1948, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$11.60 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 24 day of December, A.D. 1948.

(Seal) EDMUND L. SMITH,
Clerk.

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California,

September 1, 1948, 10:00 o'clock a.m.

The Clerk: Pack vs. United States of America, et al.

Mr. Hoffman: I understand that the parties are willing to stipulate that the facts alleged in Paragraphs I, II, III, IV and V of the plaintiff's complaints are true.

The Court: Isn't this the sum and substance of your problem, that these is no evidence that there

was any act on the part of the deceased to change the beneficiary?

Mr. Hoffman: We were going to stipulate to that. In other words, it is stipulated that the facts alleged in Paragraphs I, II, III, IV and V of the plaintiff's complaint are true.

Mr. Komins: That is correct.

Mr. Hoffman: Mr. Cameron, is that correct?

Mr. Cameron: I will have to check on that.

The Court: If you will excuse me a moment, I will get the pre-trial statement.

Mr. Hoffman: The stipulation is that the facts alleged in Paragraphs I, II, III, IV and V of plaintiff's complaint are true. It is further stipulated that at no time during his lifetime did the deceased, Clyde A. Pack, ever designate plaintiff as beneficiary. In other words, he never executed any instrument that was in effect a change of beneficiary, and that the facts alleged in Paragraph VI of the complaint [2] are not true.

Is it so stipulated?

Mr. Komins: That is correct.

Mr. Cameron: That is true.

Mr. Hoffman: In Paragraph VII, that the defendant Lilly Pack resides in Kirksville, Missouri, and that she claims an interest in and to said insurance contract adverse to plaintiff,—it is stipulated that is true.

The last part is a conclusion, that all of her claims are without right.

It is also stipulated that the facts alleged in Paragraphs VIII and IX are true.

Mr. Cameron: Yes, the defendant Lilly Pack so stipulates.

Mr. Komins: So stipulated.

Mr. Hoffman: It will also be stipulated that all of the premiums that were paid upon the insurance by the deceased insured as described in Paragraph II of the second count of the complaint, were deducted from payments and paid to the deceased insured from the United States Marine Corps, while he was serving in the United States Marine Corps.

Mr. Cameron: That is stipulated.

Mr. Komins: So stipulated.

Mr. Hoffman: That is the stipulation of facts, your Honor. [3]

Mr. Komins: It is stipulated that Clyde A. Pack, also known as Clyde Albert Pack, was born March 25, 1910; that plaintiff, Angel L. Pack, was born on June 5, 1909, and the co-defendant, Lilly Pack, was born on December 11, 1883.

Mr. Hoffman: So stipulated for the plaintiff.

Mr. Cameron: So stipulated for the defendant and cross-complainant, Lilly Pack.

Mr. Hoffman: I have nothing further in the way of stipulations.

Mr. Cameron: Turning to paragraph V on page 4 of the answer of Lilly Pack, will the facts set forth in paragraph V be stipulated to?

Mr. Hoffman: The plaintiff will stipulate that the facts set forth therein are true.

Mr. Cameron: Maybe you will stipulate that, if the court makes award in favor of the claimant

Lilly Pack, it may award attorney's fees as provided by statute, namely, not to exceed 10 per cent? That is Title 38, Section 55.

The Court: Yes. Is there any argument?

(Argument.)

The Court: I feel that it was quite a solemn pact the government made with the members of the armed forces, that they provide insurance for their named beneficiaries. I feel that that was a solemn obligation on the part of the government. I am going to direct that the proceeds of the policy [4] be paid to the mother, from the proceeds of the policy itself. With respect to attorney's fees. I understand that 10 per cent is the maximum. I wonder if this case justifies a maximum fee.

Mr. Cameron: I do not content that it should be the maximum fee.

The Court: Well, what do you think would be reasonable?

Mr. Cameron: \$500.

Mr. Hoffman: Counsel means 5 per cent instead of 10 per cent.

Mr. Komins: I would suggest that it be in percentage instead of a fixed fee. [5]

[Endorsed]: Filed Dec. 23, 1948.

[Endorsed]: No. 12139. United States Court of Appeals for the Ninth Circuit. Angel L. Pack, Appellant, vs. United States of America and Lilly Pack, Appellees. Transcript of Record. Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed December 27, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Circuit Court of Appeals
Ninth Judicial Circuit

No. 12139

ANGEL L. PACK,

Appellant,

vs.

UNITED STATES OF AMERICA
and LILLY PACK,

Appellees.

STATEMENT OF POINTS AND
DESIGNATION OF RECORD

I.

STATEMENT OF POINTS

Appellant hereby adopts as her points on appeal, the statement of points in the transcript of the record filed in the above entitled Court.

Dated: January 4th, 1949.

IRVING G. BISHOP &

SYLVESTER HOFFMAN,

By /s/ SYLVESTER HOFFMAN,

Attorneys for Appellant Angel L. Pack.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed January 5, 1949. Paul P. O'Brien, Clerk.

No. 12139

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ANGEL L. PACK,

Appellant,

vs.

UNITED STATES OF AMERICA AND LILLY PACK,

Appellees.

BRIEF OF APPELLANT.

SYLVESTER HOFFMAN,

IRVING G. BISHOP,

215 West Fifth Street, Los Angeles 13,

Attorneys for Appellant.

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No. 12139

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ANGEL L. PACK,

Appellant,

vs.

UNITED STATES OF AMERICA AND LILLY PACK,

Appellees.

BRIEF OF APPELLANT.

Jurisdiction.

(a) *Of the District Court.* This action was filed in the District Court by the appellant, plaintiff, Angel L. Pack, as plaintiff, against the appellees, United States of America and Lilly Pack, under the National Service Life Insurance Act of 1940, as amended (Title 38, Chap. 13, U. S. Code). Section 617 of the Act (Sec. 817, Title 38, U. S. C. A.), as amended August 1st 1946, incorporates and adopts by reference, Section 445 of Title 38, U. S. Code, which, in turn, vests exclusive jurisdiction in the District Court in the district where any person claiming under such insurance resides. Any person claiming to have an interest under such insurance may be made a party to such suit, wherever they may reside.

The complaint [Tr. 2-7], the answer of appellee United States [Tr. 7-11], the answer and cross-claim (called "cross complaint") of appellee Lilly Pack [Tr. 11-16], and the answers thereto of appellant [Tr. 16-17] and of appellee United States [Tr. 18-19], the oral stipulation of the parties [Tr. 33-36], and Findings of Fact [Tr. 19-26], all clearly establish that at and prior to the commencement of the action, there was a disagreement under a contract of insurance between the Veterans Administration and appellant, that she was a resident of the Southern District of California, and that Lilly Pack claimed to have an interest in such insurance.

Jurisdiction as to the claim of Angel, appellant, against Lilly, appellee, is not only founded upon Sections 817 and 445, Title 38, U. S. Code, as aforesaid, but also on Sections 1331 and 1332, Title 28, U. S. Code, as amended (Sec. 41, Title 28, U. S. C. A., 1927 Ed., subd. (1), Judicial Code, Sec. 24, prior to the effective date of new Judicial Code). The amount exceeds \$3,000.00, Angel is a citizen of California [Tr. 22, par. VIII], and Lilly is a citizen of Missouri [Tr. 22-23, par. X].

(b) *Of the Court of Appeals for the Ninth Circuit.* Appellant has taken this appeal from the final judgment [Tr. 28-30] entered on September 22nd 1948, and notice of appeal was filed November 19th, 1948, within the time provided by Section 2107, Title 28, U. S. Code (the United States being a party). The Court of Appeals has jurisdiction to review the final decision (judgment) in question, under Sections 1291 and 1294, subd. (1), Title 28, U. S. Code.

Statement of the Case.

There is no dispute between the parties as to the facts, as follows:

Clyde A. Pack married appellant, Angel L. Pack, in California, on June 24th, 1932, both then being residents of California and at all times thereafter remained husband and wife, and residents of said state, until the said marriage and the residence of Clyde was terminated by his death on June 11th, 1945. There were two children as the issue of said marriage, both of whom survived their father.

Clyde enlisted in the U. S. Marine Corps on February 25, 1944, and was in active service therein until his death. While a member thereof, he applied for and was granted by the appellee United States, through its Veterans Administration, \$10,000 of National Service Life Insurance, effective March 6th, 1944, under certificate N-15,813,803, for which he designated the appellee Lilly Pack, as beneficiary, *without the consent of appellant, his wife*. Lilly Pack was his mother and no contingent beneficiary was named.

All of the premiums called for under the terms of said insurance were paid in the amounts and at the times as provided by law and the terms of said insurance, and said insurance was in full force and effect when it matured upon Clyde's death.

All of such premiums were paid out of the earnings of Clyde, appellant's husband, which earnings were the community property of Clyde and appellant.

Clyde at no time executed any change of beneficiary.

Appellee Lilly Pack is a resident of Missouri and claims an interest in such insurance, as the named beneficiary, adverse to the claims of appellant.

Appellant, Angel L. Pack, after the death of Clyde, made written demand to the appellee, United States of America and to the Veterans Administration thereof, for payment to her of the proceeds of said insurance, and on August 25, 1947, and prior to the filing of said complaint, said appellee and its Veterans Administration disagreed with appellant and refused to pay her claim or any part thereof, and that a disagreement exists between appellant and said appellee as to her claim.

Not any of the proceeds under said insurance have been paid to either Angel L. Pack or Lilly Pack, or to anyone else.

So much for the agreed and undisputed facts.

The District Court, in addition to the foregoing, found that although the insurance premiums were paid and said insurance was purchased wholly by and from the community property of Clyde and Angel, his wife [Tr. 24, par. II, and the second par. II, Tr. 24]:

(1) That Angel, nevertheless, had and has no interest in the insurance here involved [Tr. 22-23, par. X]; and

(2) That Lilly does not hold and will not hold any part of the proceeds of said insurance in trust for plaintiff, but that all such proceeds are and will be the absolute property of Lilly, free from any trust in favor of Angel [Tr. 25, par. III].

In its Conclusions of Law [Tr. 26-28] the District Court held contrary to the contentions of appellant:

(1) That insurance issued under the National Service Life Insurance Act is not subject to the community property laws of California and that disposition of the proceeds of such insurance cannot be controlled or governed by such laws [par. III];

(2) That such proceeds must be paid "according to the terms of said contract" (*i. e.*, only to Lilly as named beneficiary [par. IV]);

(3) That appellant take nothing by her complaint [par. V] and that she has no right, title or interest therein or to any of the proceeds [par. VI];

(4) And awarded the entire insurance to Lilly as named beneficiary [par. VII] subject to her attorneys' fees [par. VIII].

Specifications of Errors.

The District Court erred:

1. In making the following Findings of Fact, in that not any of said findings are supported by the evidence or by law:

(a) In finding [Tr. 22-23, par. X] that appellant had and has no interest in the insurance and in failing to find that the insurance was the community property of Clyde and appellant and that appellant had a vested one-half interest therein;

(b) In finding that appellee Lilly Pack, does not hold and will not hold any part of the proceeds from such insurance in trust for plaintiff [Tr. 25, par. III], and in failing to find that appellee Lilly Pack, holds and will hold an undivided one-half of all of the proceeds in trust for appellant, and that she deliver the same, as received, to appellant.

2. In not finding:

(a) That the insurance was the community property of Clyde and appellant and that appellant had and still has a vested one-half interest therein;

(b) That appellee Lilly Pack is the trustee of appellant and that she is required to deliver one-half of all proceeds, as received, to appellant;

(c) That appellee, Lilly Pack, be required to execute an assignment to appellant of a one-half undivided interest or as to \$5,000 of such insurance.

3. In making certain Conclusions of Law [Tr. 26-28], such conclusions being unsupported either by the evidence or by law:

(a) In concluding that the disposition of the proceeds is not subject to or controlled or governed by the com-

munity property laws of California [Tr. 26-27, paras. III and IV];

(b) In concluding that appellant was entitled to take nothing and has no right or claim in or to the insurance or its proceeds [Tr. 27, paras. V and VI];

(c) In concluding that appellee, Lilly Pack, is entitled to receive the entire benefits of said policy [Tr. 27, par. VII].

4. In failing to conclude:

(a) That the insurance was the community property of appellant and Clyde and that she had and has an undivided one-half interest therein, and directing the entry of judgment accordingly, or

(b) That the insurance was the community property of appellant and Clyde, and that as between appellant and appellee Lilly Pack, that the latter holds and will hold an undivided one-half of all proceeds therefrom in trust for appellant, directing that said appellee deliver one-half of all such proceeds forthwith to appellant, upon receipt thereof, and directing that such appellee make an assignment of one-half, or \$5,000, of said insurance to appellant, and upon her failure so to do, to direct the Clerk of the Court to execute such assignment for her; and

(c) That appellee Lilly Pack, was estopped from claiming any right or interest in said insurance or its proceeds to the extent of appellant's (one-half) community interest therein.

5. In awarding judgment against appellant, said judgment not being supported by the evidence and against law and in not awarding judgment in favor of appellant, in accordance with the findings it should have made and the conclusions it should have rendered as aforesaid.

ARGUMENT.

Summary of Argument.

I.

The insurance was community property and the surviving widow had a vested interest in one-half thereof.

II.

As between the widow and the named beneficiary, the latter would hold one-half of the proceeds in trust for the widow, and may be required to make an assignment of a one-half interest to the widow.

I.

The Insurance Was Community Property and the Surviving Widow Had a Vested Interest in One-Half Thereof.

A. *The insurance was community property.* It was stipulated, and the Court found, that Clyde, the insured, and Angel, his wife, were married in California in 1932, and were residents thereof, and husband and wife, at all times thereafter until the relationship was terminated by Clyde's death in 1945; and that all the premiums paid in the purchase of the insurance on Clyde's life, purchased by him in 1944 (during such coverture) were paid from and by community income. The insurance therefore was the community property of appellant (Angel) and Clyde.

3 *Cal. Jur. Supp.* (1926-36), "Community Property," Sec. 30, pp. 509-511;

114 *A. L. R.* 546-548, II a, "California";

Re Perkins (1943), 21 Cal. 2d 561, 134 P. 2d 231;

Grimm v. Grimm (1945), 26 Cal. 2d 173, 157 P. 2d 841;

Civil Code, California, Secs. 161a, 164 and 172;

Wissner v. Wissner (1949), 89 A. C. A., 201 P. 2d 837.

B. *The widow (appellant) is therefore entitled to one-half of the proceeds of the policy.* There is no question that the husband, Clyde, could make a gift of his one-half interest in the community life insurance policy, by naming his mother, the appellee, Lilly, and that even had he named his wife Angel, as beneficiary, he was free to change such designation of beneficiary without her consent. But he could not and did not, by naming Lilly as beneficiary, divest his wife of her community interest therein, without her consent.

Traveler's Ins. Co. v. Fancher (1933), 219 Cal. 351, 26 P. 2d 482;

McBride v. McBride (1936), 11 Cal. App. 2d 521, 54 P. 2d 480;

3 *Cal. Jur. Supp.* (1926-36), "Community Property," Sec. 30, pp. 509-511;

Civil Code, California, Secs. 161a, 164 and 172;

Wissner v. Wissner (1949), 89 A. C. A., 201 P. 2d 837.

The Court expressly found that appellant Angel, at no time consented to the naming of appellee Lilly, as beneficiary [Tr. 21, par. V].

It may be conceded that *had* the defendant United States made payment to the named beneficiary Lilly, before being advised of appellant's claim to one-half of the insurance as *her* (Angel's) property, it would not have been subjected to liability for double payment. But such is not the case here. No payments have been made to anyone and the Government is fully advised as to Angel's claim, and all will concede that it will be fully protected, with both claimants before the Court, if the judgment is reversed and the trial court is directed to enter judgment in favor of Angel as to her one-half of such insurance.

The judgment of the trial court deprived appellant of her property without compensation and any Act of Congress which it is claimed justifies the taking of her property, in which she had a vested interest (to-wit: one-half of the insurance), would be wholly void and beyond the powers of Congress to enact.

Fifth and Tenth Amendments, U. S. Constitution;
Wissner v. Wissner (1949), 89 A. C. A.,
201 P. 2d 837 (and cases therein cited).

II.

As Between the Widow and the Named Beneficiary, the Latter Would Hold One-Half of the Proceeds in Trust for the Widow, and May Be Required to Make an Assignment of a One-Half Interest to the Widow.

A. *Where, as here, a husband names a third party (here, his mother), as beneficiary under community life insurance, a trust was created as to its proceeds.* Whether or not a true “trust” arises, if the proceeds are paid to appellee, Lilly, she will be receiving property belonging to appellant Angel, to the extent of one-half of the proceeds, and may be required to deliver such part to appellant, the purported gift of one-half of the community property to the insured’s mother being wholly invalid.

Wissner v. Wissner (1949), 89 A. C. A., 201 P. 2d 837;

New York Life Ins. Co. v. Bank of Italy, 60 Cal. App. 602, 214 Pac. 61;

Civil Code, California, Secs. 161a, 164 and 172;

McBride v. McBride, 11 Cal. App. 2d 521, 54 P. 2d 480;

McElroy v. McElroy (1948), 32 A. C. 873, 198 P. 2d 683.

Thus, even if it should be determined, as a matter of law, that appellant’s Point I, while sound, would avail her nothing, nevertheless, where the husband had power to designate his mother, Lilly, as beneficiary only as to *his* one-half of the insurance, Angel may cause a trust to be

impressed on the proceeds under her second cause of action as against Lilly.

Wissner v. Wissner (1949), 89 A. C. A.
201 P. 2d 837;

Calhoun v. Ussery (1930), 46 F. 2d 495;

Ambrose v. U. S. (1926), 15 F. 2d 52;

Kaschefskey v. Kaschefskey (C. C. A. 6, 1940), 110
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Duncan v. Linton (1929), 38 Ohio App. 57, 175
N. E. 621 (petition in error dismissed 121 Ohio
St. 615, 172 N. E. 377];

Christensen v. Christensen (1926), 14 F. 2d 475;

Noble v. Andrea (1927), 141 S. Car. 168, 139
S. E. 403.

The foregoing and other similar cases all concerned Government life insurance.

It should be remembered that Clyde is presumed to have known the law—that by virtue of Sections 161a, 164 and 172 of California's Civil Code, the insurance would be community property, and that he had no power to divest his wife of her one-half interest therein without her consent. It must also be presumed that he did not intend to defraud his wife of her interest therein. Consequently, when he named his mother as beneficiary, without his wife's consent, it must be presumed that he intended that such designation should apply only to the one-half over which he had the power to designate a third party, as beneficiary, to the same effect as if he so announced his intention, and that he intended that his wife Angel, received the other one-half.

The foregoing is fortified by the fact that Clyde, in applying for a \$10,000 single policy, could *name* but *one* principal beneficiary (see *Kaschefskey* case above), and it must be assumed that, therefore, he named his mother, knowing that his wife, under California law, would receive one-half of the proceeds without being named.

B. *Lilly should be required to assign a one-half interest in the insurance to appellant.* Clyde, during his lifetime, was trustee for his wife as to her one-half of the community property, in that he had no power to make a gift thereof. To let the judgment stand, will be but to sanctify an unjust enrichment in Lilly, and under the circumstances she should be required to make restitution.

McElroy v. McElroy (1948), 32 A. C. 873. 198 P. 2d 683 (and cases therein cited);

Wissner v. Wissner (1949), 89 A. C. A., 201 P. 2d 837 (and cases therein cited);

Restatement, "Restitution," Sec. 1, and 1940 Pkt. Supp. "Calif. Annotations";

Restatement, "Trusts," Vol. 2, Sec. 292(1).

It is now settled that under *Rules 1 and 2, FRCP*, a District Court, in a civil action, may give full relief.

Lilly could make a voluntary assignment as to one-half of the insurance to her son's widow, the appellant, no payments having so far been made to Lilly.

38 U. S. C. A., Section 816:

(" . . . assignments of . . . any part of the beneficiary's interest may be made by a designated beneficiary to a widow . . . of the insured . . . if the assignment is delivered to the Veterans Administration before any payments of the insurance shall have been made to the beneficiary"), as amended August 1, 1946.

Thus, even *if* this Court holds that appellant's Point I is not effective as against the Government, nevertheless as between the contestants (Angel and Lilly), under its equity powers, acting *in personam*, the District Court may be directed to enter a judgment requiring Lilly to execute the assignment and that Court will have power to enforce such a decree, as is illustrated by the principles set forth in:

Taylor v. Taylor, 192 Cal. 71, 218 Pac. 756:

In re Barreiro's Estate, 125 Cal. App. 752, 14 P. 2d 786.

Congress has expressly conferred jurisdiction upon the District Courts to hear and determine *all* controversies between persons claiming some right under a contract of Government insurance and to determine the interests of each claimant, particularly where, as here, the United States admits liability under the policy.

Secs. 445 and 817, Title 38, U. S. C. A.

There can be no doubt but that with the parties before it, the Superior Court of the State of California would have power to require Lilly to pay one-half of the insurance to Angel and make an assignment as to a one-half interest to her.

McElroy v. McElroy (1948), 32 A. C. 873, 198 P. 2d 683, and that, the District Court having jurisdiction over such parties *in personam*, was bound to apply the law under the admitted facts, in accordance with that of the State of California, at least insofar as the controversy between them was concerned.

Wissner v. Wissner (1949), 89 A. C. A.
201 P. 2d 837.

Conclusion.

It is respectfully submitted that in the total absence as to conflict as to the facts (they having been stipulated to by all parties):

1. That the District Court erred in not finding that the insurance was the community property of Angel and Clyde, and awarding to Angel a one-half interest therein (to-wit: awarding her \$5,000 of the \$10,000 of insurance);

2. Or, even if, as held by the District Court (which holding appellant urges was error), the community property rights of appellant were inapplicable in an action against the United States, nevertheless, that as between the beneficiary (appellee Lilly) and the widow (appellant Angel), the District Court erred in not determining that Lilly was a trustee, as between herself and Angel, as to one-half of the insurance, and requiring Lilly to assign a one-half interest to Angel, and in not entering judgment accordingly.

Dated: February 23rd, 1949.

SYLVESTER HOFFMAN,
IRVING G. BISHOP,

Attorneys for Appellant.

No. 12,139

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ANGEL L. PACK,

Appellant,

vs.

UNITED STATES OF AMERICA, and LILLY PACK,

Appellees.

BRIEF FOR APPELLEE, UNITED STATES OF AMERICA.

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PAUL P. O'BRIEN,
CLERK

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No. 12,139

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ANGEL L. PACK,

Appellant,

vs.

UNITED STATES OF AMERICA, and LILLY PACK,

Appellees.

BRIEF FOR APPELLEE, UNITED STATES OF AMERICA.

Jurisdiction.

The jurisdiction of the District Court is founded upon Section 617 of the National Service Life Insurance Act of 1940, as amended (38 U. S. C., Sec. 817), which incorporates by reference Section 19 of the World War Veterans' Act, as amended (38 U. S. C., Sec. 445), vesting Federal District Courts with jurisdiction to entertain suits upon Government insurance contracts in the event of a disagreement as to a claim under the contract.

The plaintiff brought this suit on a \$10,000 contract of National Service Life Insurance issued to her husband, Clyde A. Pack, while in the naval service, alleging, in Paragraph VIII of her complaint, that a claim for insurance, which she had presented to the Veterans' Administration on August 25, 1947, had been denied, and that a disagreement existed between her and the United States.

[R. 4.] These allegations as to the existence of a disagreement such as required to vest the court with jurisdiction were admitted in Paragraph V of the answer filed by the United States. [R. 8-9.] The allegations with respect to the existence of a disagreement before suit were also stipulated to be true. [R. 34.]

The jurisdiction of this court to entertain the appeal is likewise conferred by Section 617 of the National Service Life Insurance Act of 1940, as amended (38 U. S. C., Sec. 817), and Section 19 of the World War Veterans' Act, as amended (38 U. S. C., Sec. 445).

Statement of the Case.

The undisputed facts show that Clyde A. Pack (the insured) enlisted in the United States Marine Corps on February 25, 1944, and while in active service applied for and was granted a \$10,000 contract of National Service Life Insurance, effective March 6, 1944, designating the appellee, Lilly Pack, his mother, as the beneficiary thereof. The contract was kept in force by the payment of monthly premiums, deductions being made from the insured's pay while in the naval service, and was in force on the date of his death, June 11, 1945.

The insured did not change the beneficiary of his National Service Life Insurance after designating his mother as beneficiary in the original application.

After the insured's death, claims for insurance were presented to the Veterans' Administration by Angel L. Pack, the appellant herein, and by Lilly Pack, appellee. The Veterans' Administration denied the claim of the appellant and allowed the claim of the appellee, Lilly Pack, as the

designated beneficiary, but has made no payments thereunder because of this litigation.

In her complaint appellant sought a recovery of the proceeds of the National Service Life Insurance contract issued to her husband, on the theory (1) that she was designated the beneficiary subsequent to the issuance of the insurance, or (2) if it was determined that she was not the designated beneficiary, that she was entitled to a one-half interest in the said insurance, under and by virtue of the community property laws of the State of California. [R. 2-7.] The answer filed by the United States denied that the appellant was entitled to a recovery under either theory. [R. 7-11.] The answer and cross-complaint of the appellee, Lilly Pack, denied that the appellant was entitled to a recovery and set forth her claim to the proceeds of the insurance as the designated beneficiary. [R. 11-16.]

The case was tried before the Honorable Ben Harrison, District Judge, after a jury had been waived, and he gave judgment against the appellant and in favor of the appellee, Lilly Pack [R. 28-30], rendering findings of fact and conclusions of law in support thereof [R. 19-28], finding that the appellee, Lilly Pack, was the designated beneficiary and the person entitled to the proceeds of the insurance contract; that the appellant had never been designated as the beneficiary and was not entitled to a share in the insurance proceeds, under or by virtue of the community property laws of the State of California. He concluded as a matter of law that the insurance was issued under the National Service Life Insurance Act, as amended; was not

subject to and could not be controlled or governed by the community property laws of the State of California, and that the community property laws of the State of California could not and did not change the terms of the policy of insurance sued upon. [R. 26-27.] The judgment was entered September 22, 1948, and the present appeal filed November 19, 1948. [R. 30.]

Summary of Argument.

I.

National Service Life Insurance contracts were authorized by Act of Congress and are contracts of the United States, not subject to community property laws of the State of California.

II.

A trust may not be impressed upon National Service Life Insurance by virtue of the community property laws of the State of California. The National Service Life Insurance Act contains no provision for the creation of a trust and the provisions of the Act are inconsistent with the creation of a trust. None of the elements of a trust were shown to exist in this case. An assignment of National Service Life Insurance was expressly prohibited at the time this insurance contract matured and, under the amendatory Act permitting voluntary assignments under stated conditions, the appellee may not be compelled to assign any portion of the insurance for which she was the designated beneficiary.

ARGUMENT.

I.

National Service Life Insurance Contracts Were Authorized by Act of Congress and Are Contracts of the United States, Not Subject to Community Property Laws of the State of California.

National Service Life Insurance contracts were authorized by the National Service Life Insurance Act, passed by Congress on October 8, 1940 (38 U. S. C. A., Sec. 801); the provisions of that Act, as amended, govern the designation of beneficiaries and payment of insurance proceeds thereunder, and are not subject to and may not be controlled, modified or changed by the community property laws of the State of California. *Barton v. United States*, 75 Fed. Supp. 703 (S. D. Calif.); *Johnson v. Shelton*, Memorandum Ruling No. 522,648 (Superior Court of State of California, County of Los Angeles). (Appendix, *infra*.) In the *Barton* case, the court said (pp. 705, 706):

Whether state law can control disposition of proceeds of policies issued pursuant to the National Service Life Insurance Act of 1940, 38 U. S. C. A., Secs. 801-818, depends upon the intent of Congress; for it is clear that the Act, being a constitutional exercise of powers granted to Congress, * * * is "Supreme Law of the Land" * * * if Congress so willed. * * *

* * * * *

I therefore conclude that Congress left no room for the application of state law to rights arising under policies issued pursuant to the National Service Life Insurance Act of 1940, as amended, 38 U. S. C. A., Secs. 801-818. It follows then that California's community property law, [Cal. Civ. Code, Sec. 164], can

confer no right on plaintiff to share in the proceeds of the policy at bar.

My learned colleague Judge Harrison so held with respect to the community property law of Texas in *James v. United States, et al.*, D. C., S. D. Cal., 1947.

* * * * *

Also, as stated in *Johnson v. Shelton, supra*:

In the case before us the policy of insurance was issued by the Federal Government pursuant to a Congressional act. To the extent then that any State law conflicts with this act of Congress it is of necessity void and of no effect. * * *

Similar rulings have been rendered without opinions by United States District Judge Ben Harrison, in *James v. United States, et al.*, No. 6061-BH, on June 16, 1947 (Appendix); by Judge Campbell E. Beaumont, in *Rhodes v. United States, et al.*, No. 5845-B, and by Judge Jacob Weinberger, in *Hayek v. Hayek and United States*, No. 7400-W, all decided in the District Court of the United States for the Southern District of California; and by the Superior Court of the State of California in and for the County of Los Angeles, in *Nobles v. Cannell*, No. 502-587. There are no Federal Court decisions to the contrary of which we are aware.

Government insurance contracts are contracts of the United States (*Lynch v. United States*, 292 U. S. 571), and their construction presents questions of Federal law not controlled by the law of any State. *Woodward v. United States*, 167 F. 2d 774 (C. C. A. 8th); *Cassarello v. United States*, 271 Fed. 486 (M. D. Pa.), affirmed, 279

Fed. 396 (C. C. A. 3d); *United States v. County of Allegheny*, 322 U. S. 174, 183; *Clearfield Trust Co. v. United States*, 318 U. S. 363. As stated in *Woodward v. United States*, *supra* (pp. 778-779):

Policies of National Service Life Insurance are, of course, contracts of the United States and possess the same legal incidents as other government contracts. *Lynch v. United States*, 292 U. S. 571, 576, 54 S. Ct. 840, 78 L. Ed. 1434. The validity and construction of such policies present questions of federal law. *Clearfield Trust Co. v. United States*, 318 U. S. 363, 366, 63 S. Ct. 573, 87 L. Ed. 838; *United States v. County of Allegheny*, 322 U. S. 174, 183, 64 S. Ct. 908, 88 L. Ed. 1209.

Also, in *United States v. Fuller*, 97 F. 2d 541 (C. C. A. 5th), involving a war risk insurance contract, the court pointed out (p. 542):

Such claims have their basis and foundation in the Federal statutes, which, creating the claims and the conditions under which they may be maintained, completely govern and control their presentation as claims, and suits brought upon them, against the United States. (Cases cited.) * * *

Under the provisions of Section 602(g) (38 U. S. C. A., Sec. 802(g)), the insured had the right to designate the beneficiary of his National Service Life Insurance contract within a restricted class of beneficiaries, and the right to change the beneficiary, without the beneficiary's consent. The section reads as follows:

(g) The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent, brother or sister of the insured.

*The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided: * * *.*
(Italics supplied.)

This was one of the important provisions of the contract¹ which the insured entered into with the United States when he applied for National Service Life Insurance, and his designation of the appellee, Lilly Pack, his mother, as the beneficiary, without any change having been made during his lifetime, should control in the payment of insurance benefits. As pointed out by the District Judge:

I feel that it was quite a solemn pact the Government made with the members of the armed forces, that they provide insurance for their named beneficiaries. I feel that that was a solemn obligation on the part of the Government. I am going to direct that the proceeds of the policy be paid to the mother, from the proceeds of the policy itself. * * *. [R. 36.]

Under Government insurance contracts, the only relations of contract are between the Government and the insured, the beneficiary being a volunteer. *White v. United States*, 270 U. S. 175; *Von Der Lippi-Lipski v. United States*, 4 F. 2d 168 (App. D. C.); *United States v.*

¹The contract provisions are found in the Act, the amendments thereto and the regulations promulgated thereunder. *White v. United States*, 270 U. S. 175; *Lynch v. United States*, 292 U. S. 571; *Wilner v. United States*, 292 U. S. 571.

Sterling, 12 F. 2d 921 (C. C. A. 2d). As stated in *White v. United States*, *supra* (pp. 180-181):

The only relations of contract were between the Government and him. White's mother's interest at his death was vested only so far as he and the Government had made it so, and was subject to any conditions upon which they might agree. They did agree to terms that cut her rights down to one-half. She is a volunteer and she cannot claim more. See *Helmholz v. United States*, 294 Fed. 417, affirming 283 Fed. 600. *Gilman v. United States*, 294 Fed. 422, affirming 290 Fed. 614.

Appellant, who admittedly was not designated as beneficiary, had no relations of contract with the Government and could occupy no better position than the named beneficiary.

Although appellant alleged in her complaint [par. VI, R. 3-4] that, subsequent to March 6, 1944, and during his lifetime, "said Clyde A. Pack changed the beneficiary under all of the aforesaid insurance to plaintiff and designated plaintiff the sole beneficiary thereof," this claim appears to have been abandoned on this appeal, in view of the statement made by appellant in her brief (p. 3) that "Clyde at no time executed any change of beneficiary." In any event, there was no evidence to show a formal change of beneficiary in her favor and no evidence introduced from which a change of beneficiary might be established, under the rule announced in a number of recently decided cases, to the effect that a change of beneficiary may be shown where the evidence establishes an intention on the part of the insured to change the beneficiary, together with evidence of an act or action accomplishing

such a change. *Kendig v. Kendig*, 170 F. 2d 750 (C. C. A. 9th); *Mitchell v. United States*, 165 F. 2d 758 (C. C. A. 5th); *Roberts v. United States*, 157 F. 2d 906 (C. C. A. 4th), certiorari denied, 330 U. S. 829; *Collins v. United States*, 161 F. 2d 64 (C. C. A. 10th), certiorari denied, 331 U. S. 859; *Bradley v. United States*, 143 F. 2d 573 (C. C. A. 10th), certiorari denied, 323 U. S. 793; *Shapiro v. United States*, 166 F. 2d 240 (C. C. A. 2d), certiorari denied, 334 U. S. 859; *Rosenschein v. Citron*, 169 F. 2d 885 (App. D. C.).

That the community property laws of a state may not be invoked to change, modify or alter the provisions of a National Service Life Insurance contract, is implicit in Section 454a, Title 38, U. S. C. A., which is made applicable to National Service Life Insurance by Section 816, Title 38, U. S. C. A., and which provides, in part, as follows:

Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, *and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.*² * * *
(Italics supplied.)

The section has been construed as having this effect in *Barton v. United States*, *supra*, and *Johnson v. Shelton*,

²Comparable provisions have been in effect for years in relation to Government insurance contracts issued pursuant to earlier legislation (38 U. S. C. A., Sections 454 and 454a), and have been enforced. *Perrydore v. Hester*, 110 So. 403; *Mixon v. Mixon*, 166 S. E. 516; *City of Atlanta v. Stokes*, 165 S. E. 270; *Wilson v. Sawyer*, 6 S. W. 2d 825.

supra, and with respect to similar benefits in *Lawrence v. Shaw*, 300 U. S. 245; *Pagel v. Pagel*, 291 U. S. 473; *Lewis v. United States*, 56 F. 2d 563 (C. C. A. 3d); and *Culp v. Webster*, 25 Cal. App. 2d Supp. 759, 70 P. 2d 273.

The Act shows a Congressional intent to foreclose the application of State statutes in another respect, Section 602(i) (38 U. S. C. A., Sec. 802(i)) providing:

The right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payments. No person shall have a vested right to any installment or installments of any such insurance and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority, as provided in subsection (h) of this section. * * *.

If National Service Life Insurance is community property, it would then become the absolute property of the appellant, contrary to the aforementioned section, which expressly prohibits her from having any vested right in such insurance. And if the appellant was named beneficiary in the first instance, the only right she would have under this section would be a right to the monthly payments as they became due, conditioned upon her being alive to receive such payments.

The Act also specifically prohibits payment of the benefits to the heirs or legal representatives as such of either the insured or the designated beneficiary, showing a Congressional intention not to subject National Service Life Insurance in any way to State statutes of inheritance or

devolution, Section 602(j) (38 U. S. C. A., Sec. 802(j)) providing:

No installments of such insurance shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary, and in the event that no person within the permitted class survives to receive the insurance or any part thereof no payment of the unpaid installments shall be made, * * *.

Other provisions of the National Service Life Insurance Act indicating a Congressional intent to provide a completely integrated Federal plan of insurance for members of the armed forces, to be administered on a National scale free from State jurisdiction or control, are (1) the provision directing the Administrator of Veterans' Affairs to administer the Act and conferring authority to promulgate regulations for that purpose;³ (2) the provision that the United States should bear the costs of administration;⁴ (3) the provision that the United States should bear the excess mortality costs and cost of waiver of premiums due to the extra hazards of military or naval service;⁵ (4) the provision for a National Service Life Insurance appropriation for the payment of liabilities;⁶ and (5) the provisions for the creation in the Treasury Department of the National Service Life Insurance trust fund and the

³Section 608 (38 U. S. C. A., Sec. 808).

⁴Section 606 (38 U. S. C. A., Sec. 806).

⁵Section 607 (38 U. S. C. A., Sec. 807).

⁶Section 604 (38 U. S. C. A., Sec. 804).

setting aside of reserves to meet all liabilities.⁷ In *Barton v. United States*, *supra* (p. 705), it was pointed out:

The cited provisions are persuasive that it was the purpose of Congress to provide in all details for the issuance and administration and settlement of service life insurance on a national basis, as the title of the Act implies. (Cases cited.)

* * * * *

Government insurance differs greatly from commercial insurance, in that a substantial part of the cost of providing this protection is borne by the United States, whereas the premiums charged an insured by a commercial insurance company cover the cost of the protection afforded, and the insurance is thus considered to be the joint property of the insured and his beneficiary. As stated in *White v. United States*, *supra* (p. 180):

The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good. * * *

See also,

Lynch v. United States, 292 U. S. 571.

The engrafting of State community property laws on National Service Life Insurance contracts would mean that veterans residing in states which have community property laws would be denied the absolute right to designate the beneficiary, which veterans living in other states clearly possess under the Act. Manifestly, Congress did not intend to discriminate against these veterans, but in-

⁷Section 605 (38 U. S. C. A., Sec. 805).

tended the National Service Life Insurance Act to have uniform application. *Barton v. United States, supra; Beach v. United States*, 79 Fed. Supp. 747 (N. D. Ohio). In any event, such an intention to discriminate should not be imputed to the Congress in the absence of language in the statute expressly so providing.

While the appellant contends that the premiums upon this insurance were paid out of earnings which were community property, and the court so found, the premiums were in fact deducted from the insured's service pay while serving in the Marine Corps [R. 24, 35], and there is at least a question as to whether service pay may be considered earnings, for, as pointed out in *Johnson v. Shelton, supra*:

In one aspect such pay represents a gift by the government rather than earnings, because the Government can compel any person to serve in its armed services without pay (*United States v. Williams*, 302 U. S. 46). In the *Williams* case the court said:

"Enlistment is more than a contract, it effects a change of status. It operates to emancipate minors at least to the extent that by enlistment they become bound to serve subject to rules governing enlisted men and entitled to have and freely dispose of their pay."

But, aside from the question as to whether service pay may be considered earnings within the meaning of the community property laws of California, and regardless of whether the premiums are paid by the insured or the beneficiary named in a Government insurance contract, the proceeds of the policy must be paid, in accordance with the terms of the contract, to the designated beneficiary. *Von Der Lippi-Lipski v. United States, supra; United States v. Sterling, supra; Murphy v. United States*, 5 Fed. Supp. 583 (D. C. Mass.); *Lewis v. United States, supra*.

II.

A Trust May Not Be Impressed Upon National Service Life Insurance by Virtue of the Community Property Laws of the State of California.

Appellant's contention that a trust was created in her favor by virtue of the California community property laws is but another way of stating that National Service Life Insurance is subject to the community property laws, and, for the reasons already stated, this may not be done. Clearly this would be a violation of Section 454a, *supra*. *Johnson v. Shelton*, Memorandum Ruling No. 522,648 (Superior Court of State of California, County of Los Angeles); *Barton v. United States*, 75 Fed. Supp. 703 (S. D. Calif.). As stated in *Johnson v. Shelton*, *supra*:

Likewise the act expressly provides that the proceeds of a policy may be paid only to the beneficiary designated in the policy and that "payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." *For this court to impress a trust on the funds as they are received by the mother is to run directly into the teeth of the statute.* (Italics supplied.)

Federal control of title to the proceeds of Government insurance, both before and after payment by the Government, has been consistently recognized and enforced. *Lawrence v. Shaw*, 300 U. S. 245; *Pagel v. Pagel*, 291 U. S. 473; *Lewis v. United States*, 56 F. 2d 563 (C. C. A. 3d); *Culp v. Webster*, 25 Cal. App. 2d Supp. 759, 70 P. 2d 273.

The case of *Wissner v. Wissner*, 89 A. C. A. 857, 201 P. 2d 837, upon which the appellant relies, we submit, should not be followed, for the reason succinctly stated in *Johnson v. Shelton*, *supra*, as follows:

It is said, however, in *Wissner v. Wissner*, that to deprive a widow of her vested right under State law to receive one-half the proceeds of a Federal life insurance policy where the premiums are paid out of community funds is contrary to the Fifth Amendment. But this contention appears to be fully answered by Justice Holmes in speaking for the court in *White v. United States*, 270 U. S. 175, 70 L. Ed. 530, and by Chief Justice Hughes speaking for the court in *Lawrence v. Shaw*, 300 U. S. 245, 81 L. Ed. 623, neither of which cases are cited in the *Wissner* case. * * *

Also, it is desired to invite the court's attention to the fact that the United States was not a party to, and did not participate in, the *Wissner* case, and the court apparently was not fully apprised of the Government's position. In still another case, decided by the Superior Court of the State of California in and for the County of Los Angeles (*Nobles v. Cannell*, No. 502-587), in which a similar situation obtained, and the court first reached the same conclusion as in *Wissner*, the United States Attorney filed a memorandum of points and authorities, as *amicus curiae*, when the party adversely affected moved to have the court's Opinion changed, and after further hearing, the court reversed its previous stand, concluding that, as a matter of law:

the community property laws of the State of California confer no rights on plaintiff to share in the proceeds of the policy involved in this action since

it was the purpose of the Congress of the United States to provide in all details for the issuance and administration and settlement of National Service Life Insurance on a National basis, and state laws or their administration may not interfere with the carrying out of a National purpose.

This appellee is advised that petition for hearing in the Supreme Court of California in the *Wissner* case was denied by said Court on March 21, 1949.

NO PROVISION FOR TRUSTS IN NATIONAL SERVICE LIFE INSURANCE ACT.

The National Service Life Insurance Act of 1940, as amended, made no provision for the creation of trusts on National Service Life Insurance policies, and its provisions limiting payments to a restricted permitted class of beneficiaries, and providing for settlement in cases of beneficiaries thirty or more years of age (Section 802(h) (2), Title 38, U. S. C. A.), in equal monthly installments for 120 months certain, continuing during the lifetime of such beneficiary or upon the refund life income plan, both of which require computation of the annuity based on the beneficiary's attained age, are wholly inconsistent with any notion that a trust could properly be imposed with respect to such payments. The history of subsequent legislation makes this quite clear. Public Law 589, 79th Congress (60 Stat. 781, *et seq.*), was approved on August 1, 1946. It amended a number of the Act's provisions and added many others. Among those added was Section 802(t), which provided four optional modes of settlement in lieu of the two modes theretofore allowed. The two which were carried forward were those above mentioned, and

they appear as (3) and (4) in said Section 802(t), which provides, in part, as follows:

Options (3) and (4) shall not be available if any firm, corporation, legal entity (including the estate of the insured), *or trustee is beneficiary*, or in any case in which an endowment contract matures by reason of the completion of the endowment period. (Italics supplied.)

The restrictive sentence above quoted was necessary only because (1) the prior limitations upon the permitted class of beneficiaries were removed by the Act, and (2) options other than (3) and (4) had been added which were susceptible of payments to corporations, trustees and the like, so that the restrictive provision became necessary where it had not been required before. A report of the Senate Committee on Finance (Report 1705, 79th Congress, see H. R. 6371) contains language identical with that appearing in the H. R. 2002, which must be taken into account in connection with this matter. As to Section 602(t), it states, in part, on page 6, as follows:

It is also provided that the Options (3) and (4) above outlined shall not be available if any firm, corporation, legal entity (including the estate of the insured), or trustee is beneficiary, or in any case in which an endowment contract matures by reason of the completion of the endowment period. The restrictions against selection of Options (3) and (4) by a firm, corporation, legal entity, or trustee is deemed necessary because payments in such cases could not be based on the life of an individual and because if insurance payments were conditioned on the life

of any individual other than the payee it would be necessary to determine such individuals as alive at the time such installments are payable.

Thus, it seems clear that a trust may not be impressed upon National Service Life Insurance, and the cases involving trusts on war risk term insurance and United States Government insurance, upon which the appellant relies (*Calhoun v. Ussery*, 46 F. 2d 495 (W. D. La.); *Ambrose v. United States*, 15 F. 2d 52 (W. D. N. Y.); *Kaschefskey v. Kaschefskey*, 110 F. 2d 836 (C. C. A. 6th)), are not in point, since they do not relate to contracts of National Service Life Insurance and differ therefrom in the particulars mentioned. Furthermore, the trusts involved in said cases were not predicated upon rights claimed to have been acquired under Government insurance contracts by virtue of State community property laws. And all of said cases did involve some expression on the part of the insured or evidence with regard to a trust, whereas no such expression or evidence was claimed by the appellant in the present case and none shown to exist. The *Kaschefskey* case, which appellant also cites in her brief (p. 13) as authority for the statement "that Clyde, in applying for a \$10,000 single policy, could *name* but *one* principal beneficiary," is not authority for such a statement, and the statement is incorrect, for the insured could (and many veterans did) designate more than one principal beneficiary, Section 602(g), *supra*, providing that: "The insured shall have the right to designate the beneficiary or beneficiaries * * *."

APPELLEE IS NOT REQUIRED TO ASSIGN.

Contrary to appellant's contention, the named beneficiary (Lilly Pack) may not be required to make an assignment of one-half interest to the appellant, for the reason that, under the provisions of Section 454a, *supra*, the proceeds of this insurance contract were not assignable, the pertinent statutory provision expressly stating that "Payments of benefits due or to become due shall not be assignable * * *." This statutory provision not only did not sanction or permit an assignment, but expressly prohibited one, and was in force at the time this insurance contract matured, on June 11, 1945. The amendment of August 1, 1946, c. 728, 60 Stat. 788 (38 U. S. C. A., Sec. 816), provides for an assignment as follows:

That assignments of all or any part of the beneficiary's interest may be made by a designated beneficiary to a widow, widower, child, father, mother, grandfather, grandmother, brother, or sister of the insured, when the designated contingent beneficiary, if any, joins the beneficiary in the assignment, and if the assignment is delivered to the Veterans' Administration before any payments of the insurance shall have been made to the beneficiary: * * *.

This amendment permits a voluntary assignment by the designated beneficiary on the conditions stated, but certainly does not require one, and there is no authority of law to compel the appellee, Lilly Pack, to make an assignment in favor of the appellant.

Conclusion.

For the reasons mentioned, it is respectfully submitted that the judgment should be affirmed.

Respectfully submitted,

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United States Attorney,

ERNEST A. TOLIN,

Assistant United States Attorney,

CLYDE C. DOWNING,

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March, 1949.

APPENDIX.

MEMORANDUM RULING.

No. 522,648.

In the Superior Court of the State of California, in and for the County of Los Angeles.

Daisy Edda Johnson, plaintiff, vs. Ada Shelton, defendant.

The controversy in this case relates to the relative rights of a widow and a mother of a deceased veteran of World War II to the monthly payments being made by the federal government under a War Service insurance policy. The widow of the veteran contends that while the policy designates the mother as the sole beneficiary, it was taken out during the deceased veteran's marriage to the widow, the plaintiff here, and hence, under our community laws, she is entitled to reach one-half of the proceeds of the policy by making the mother a trustee thereof for the plaintiff. The mother did not answer the complaint and hence her default was duly entered. Under the law of this state the default operates as an admission by the mother of the truth of the cause of action as set up in the complaint and of every material and traversible allegation therein which is well and properly pleaded, but the default does not admit that the facts alleged are in law sufficient to constitute a good cause of action or to entitle plaintiff to the relief prayed. Moreover, where the cause of action is predicated upon a document the terms of the document control over any contrary averments set forth in the complaint.

The right of the plaintiff to recover is based upon the fact that the community funds of the decedent and the

plaintiff, his widow, were used to pay the premiums on the policy issued by the federal government, and hence, under the community laws of this state, of which the decedent was a resident, one-half of the proceeds are payable to the surviving widow. This, of course, is the rule with respect to life insurance policies issued by private corporations. We turn then to consider whether the rule is the same or otherwise with respect to life insurance policies issued by the federal government.

That the rule is otherwise is the holding of Judge Mathes in *Barton v. United States*, 75 Fed. Supp. 703; that the rule is not otherwise is the holding of Presiding Justice Adams in *Wissner v. Wissner*, 89 A. C. A. 857. In view of that conflict of opinion, the question at once is presented whether the *Wissner* case is a controlling precedent upon this court if there are, as appears to be the case, decisions to the contrary by the Supreme Court of the United States.

In *McCulloch v. Maryland*, 4 Wheaton, 316, Chief Justice Marshall said:

" . . . The People of the United States have seen fit to divide sovereignty, and to establish a complex system. They have conferred certain powers on the state governments, and certain other powers on the national government. As it was easy to foresee that questions must arise between these governments thus constituted, it became of great moment to determine upon what principle these questions should be decided, and who should decide them. The

constitution, therefore, declares that the constitution itself, and the laws passed in pursuance of its provisions, shall be the supreme law of the land, and shall control all state legislation and state constitutions which may be incompatible therewith; and it confides to this court the ultimate power of deciding all questions arising under the constitution and laws of the United States. The laws of the United States, then, made in pursuance of the constitution, are to be the supreme law of the land, anything in the laws of any state to the contrary notwithstanding.”

In the case before us the policy of insurance was issued by the federal government pursuant to a congressional act. To the extent then that any state law conflicts with this act of Congress it is of necessity void and of no effect. The act in question permitted a veteran to apply for a policy of insurance, but restricted his designations of beneficiaries to certain persons, among others a wife or mother. Likewise the act expressly provides that the proceeds of a policy may be paid only to the beneficiary designated in the policy and that “payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.” For this court to impress a trust on the funds as they are received by the mother is to run directly into the teeth of the statute.

It is said, however, in *Wissner v. Wissner* that to deprive a widow of her vested right under state law to receive one-half the proceeds of a federal life insurance policy where the premiums are paid out of community funds is contrary to the Fifth Amendment. But this contention appears to be fully answered by Justice Holmes in speaking for the court in *White v. U. S.*, 270 U. S. 175, 70 L. Ed. 530, and by Chief Justice Hughes speaking for the court in *Lawrence v. Shaw*, 300 U. S. 245, 81 L. Ed. 623, neither of which cases are cited in the *Wissner* case. The *White* case involved a federal service insurance policy issued in 1918. Under the act under which the policy was issued a veteran could not designate an aunt along with his mother as a beneficiary as he wished to do. Accordingly, he designated his mother the beneficiary, but left a will providing that one-half of the sums paid to his mother should go to his aunt. Under the statute, as it existed at the time of the veteran's death, the provision in favor of the aunt was unenforceable. However, a year later Congress passed an act amending the statute so as to permit payments to persons in the class of aunts and additionally made the statute retroactive as of the date of the enactment of the original statute pursuant to a reservation contained in the original statute. The court held that the amendment of the statute did not violate any rights of the mother under the Fifth Amendment. The court said: "The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right

to it, and the relation of the government to them, if not paternal, was at least avuncular . . . The only relations of contract were between the government and him. White's mother's interest at his death was vested only so far as he and the government had made it so, and was subject to any conditions upon which they might agree."

In *Lawrence v. Shaw, supra*, it was held that the federal government could exempt the proceeds of a veteran's policy from state taxation despite the state's laws to the contrary. That being true, it would seem to follow that state community laws cannot fare any better. Moreover, it should be observed that in the instant case the insurance premiums were paid by deducting their amount from the pay of the veteran. In one aspect such pay represents a gift by the government rather than earnings, because the government can compel any person to serve in its armed services without pay (*United States v. Williams*, 302 U. S. 46). In the *Williams* case the court said:

"Enlistment is more than a contract, it effects a change of status. It operates to emancipate minors at least to the extent that by enlistment they become bound to serve subject to rules governing enlisted men and entitled to have and freely to dispose of their pay."

In view of the foregoing decisions of the United States Supreme Court it follows that judgment must be entered for the defendant.

CLARENCE M. HANSON,
Judge.

No. 6061-BH.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

In the District Court of the United States, in and for the Southern District of California, Central Division.

Anna M. James, plaintiff, v. United States of America, William H. James, William H. James and Agnes James, as custodians for Bobby Ray James, a minor, Doe One, Doe Two and Doe Three, defendants.

The above entitled cause having come on regularly for trial on the 5th day of June, 1947, before the Honorable Ben Harrison, Judge of the above entitled Court, sitting without a jury, a jury having been expressly waived by all of the parties; * * * and the Court having heard all of the testimony and having examined the documentary evidence offered by the parties, and the cause having been submitted for decision, and the Court being fully advised in the premises, hereby makes its Findings of Fact and Conclusions of Law as follows:

Findings of Fact

The Court finds as follows:

I.

The plaintiff, *Anna M. James*, is the widow of the insured soldier, *Robert L. James*. The defendant, the *United States of America* is the insurer, the defendant, *William H. James*, is the father of the deceased insured, *Agnes James* is the divorced wife of the deceased insured, *Robert L. James*, and the mother and the legal guardian of *Bobby Ray James*. *Agnes James* has had her name changed to her present name, *Diane C. James*. That by

stipulation of parties, the minor *Bobby Ray James* was made a defendant to said action.

II.

That the plaintiff and the insured, Robert L. James, were married in the State of Arkansas on April 8, 1942, and that at all times thereafter until the death of the insured, they remained husband and wife.

That subsequent thereto, and on June 8, 1942, the insured, Robert L. James, enlisted, or was inducted into active service of the United States Army and continued therein until his death on June 21, 1944.

That on July 8, 1942, the insured applied for and was granted a policy of United States government life insurance, No. N3-101-428 in the sum of \$5,000.00, naming as principal beneficiary thereof, William H. James, described as father, and as contingent beneficiary, Bobby Ray James, described as son. Said insurance contract became effective on August 1, 1942, and that the insured paid the premiums thereon by deductions from his service pay to and including the date of his death, therefore, said insurance contract was in full force and effect at said time.

That on the same day, that is to say, on July 8, 1942, the insured applied for and was granted an additional contract of National Service Life Insurance in the sum of \$5,000.00, No. N3-111-499, effective August 1, 1942, naming as the principal beneficiary thereof, Anna M. James, described as wife, and as the contingent beneficiary, Bobby Ray James, described as son. That the insured paid the premiums on said policy during the period of service by deductions from his service pay to and including the date of death.

That on March 16, 1944, the insured filed a change of beneficiary on the official form provided by the War Department for that purpose, wherein he made his father, William H. James, as principal beneficiary, on a policy No. N3-101-428, and his son, Bobby Ray James, as the contingent beneficiary thereof, and on the second policy No. N3-111-499 he named as principal beneficiary, his son, Bobby Ray James, and as contingent beneficiary, his wife, Mrs. Anna May James, the plaintiff herein; both policies were in full force and effect at the date of death. The numbers on said policies have apparently been transposed or used interchangeably, but the same does not affect them in any manner whatsoever.

That the insured was reported missing in action June 21, 1944, evidence of his death was received by the War Department and date of death was established as of June 21, 1944. See War Department Form No. 52-1, dated May 29, 1945.

* * * * *

IV.

The Court further finds that prior to the date of decedent's marriage to the plaintiff, Anna M. James, the said decedent was, and had held his legal residence in the County of Dallas, State of Texas, and that said residence continued to be the residence of the decedent and plaintiff to the date of his death. That plaintiff is now a resident of the County of Los Angeles, State of California.

V.

The Court further finds that, except as hereinafter qualified, the Community Property Laws of the State of Texas govern as to the management, control and disposition of the community property of the plaintiff and the

decedent and that no fraud is alleged or proven to have been practiced either by the decedent against the plaintiff or by the plaintiff against the decedent.

VI.

That the contracts of insurance sued upon herein were issued pursuant to the provisions of the National Service Life Insurance Act of 1940, as amended, and that the laws of the United States of America relating to such contracts of insurance are paramount in the naming of or changing of beneficiaries by an insured thereunder, and with respect to the disposition of the proceeds of said contracts of insurance, and that said National Service Life Insurance Act of 1940, as amended, and all regulations promulgated pursuant to the authority granted by said statute are not affected, modified or controlled by any state laws or regulations to the contrary.

* * * * *

Conclusions of Law.

The Court makes the following Conclusions of Law from the foregoing facts:

* * * * *

II.

That the residence of the plaintiff and her deceased husband was, prior to his death, in the County of Dallas, State of Texas.

III.

That under the contracts of insurance sued upon herein issued pursuant to the provisions of the National Service Life Insurance Act of 1940, as amended, the insured had

the absolute right to make a designation or change of designation of beneficiary, within the permitted class, without the consent of the plaintiff wife.

IV.

That the right to name or change the beneficiary thus conferred by federal statute is not subject to and cannot be affected, modified or controlled by any state community property laws.

V.

That the disposition of the proceeds or benefits of any contracts of insurance issued pursuant to the provisions of the National Service Life Insurance Act of 1940, as amended, is not subject to and cannot be controlled or governed by the community property laws of any state.

VI.

That under the Community Property Laws of the State of Texas, where there is no intention on the part of the husband to defraud a wife, the proceeds of a policy on the life of the husband vested in the beneficiary named in the policy upon the death of the insured husband even though the policy was taken out during coverture, by the husband, and the premiums were paid out of community funds.

VII.

That the plaintiff is not entitled to any relief either as prayed for in the Complaint or as shown by the facts proven.

VIII.

That neither the plaintiff's Complaint nor the facts proven state or prove a claim against any of the defendants herein upon which relief can be granted.

IX.

That the plaintiff has no right or claim in or to either of the insurance policies sued on herein or in or to any of the proceeds thereof, save and except as the same may hereafter accrue to her as the contingent beneficiary where so named.

* * * * *

Dated: June 16th, 1947.

/s/ BEN HARRISON,
United States District Judge.

No. 12139

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ANGEL L. PACK,

Appellant,

vs.

UNITED STATES OF AMERICA and LILLY PACK,

Appellees.

REPLY BRIEF OF APPELLANT.

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No. 12139

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ANGEL L. PACK,

Appellant,

vs.

UNITED STATES OF AMERICA and LILLY PACK,

Appellees.

REPLY BRIEF OF APPELLANT.

Foreword.

Since the arguments presented in the respective reply briefs of appellees are common to both, all reference in this, appellant's reply brief, will be to the brief of appellee United States of America.

ARGUMENT.

I.

Section 454a Is Inapplicable.

Appellees rely largely on Section 454a, Title 38, U. S. C. A., as prohibiting appellant from securing any relief under either of her two claims as set forth in her complaint: (1) That the insurance was community property and she, as surviving widow, had a vested interest in one-half thereof and that the designation of Lilly as beneficiary

was void as to one-half of the insurance (Appellant's Brief pp. 8-10), (2) that if she cannot recover under such claims, then as between appellant and appellee Lilly, that the latter holds one-half of the insurance in trust for appellant, and should be required to assign one-half thereof to appellant (Appellant's Brief pp. 11-14).

Likewise, the two lower court decisions appellees also rely upon, *Barton v. U. S.*, 75 Fed. Supp. 703, and *Johnson v. Sheldon* (Appendix to Appellee's Brief), place great emphasis on Section 454a. While both of those decisions were over-ruled in *Wissner v. Wissner*, 89 A. C. A. 857, 201 P. 2d 837, it is believed that Section 454a (formerly Section 454), should be analyzed. Incidentally, appellee United States joined in the petition for hearing by the Supreme Court of California, in the *Wissner* case, and urged the same grounds as it is urging upon this appeal; the petition was denied.

Section 454a, Title 38, U. S. C. A. provides that:

(1) "Payment of benefits . . . made to or on account of a beneficiary, (2) shall not be assignable, (3) shall be exempt from *claims of creditors*, (4) and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever either before or after receipt by the beneficiary"; and (5) "such provisions shall not attach to *claims* of the United States. . . ." (Emphasis added.)

Analysis as to each clause:

(1) "Payment of *benefits*" does not negative the premise that appellant may require delivery to her of an assignment of one-half of the *insurance*, itself, or preclude her from asserting her vested interest in one-half of the insurance is *her property*.

(2) This clause is inapplicable, for under the express authority given by Section 816, Title 38, U. S. C. A., relating to National Service Life Insurance, appellee, Lilly, may lawfully assign to appellant, Angel, one-half of the insurance, since (a) Angel is the widow of the insured and (b) no payments have yet been made by the Veterans' Administration under the insurance sued upon, and the prohibitions of Section 454a are expressly excluded as to such an assignment. Hence, such insurance *is* assignable, and the Court, having jurisdiction over the parties, may require Lilly to make the assignment, under recognized equitable principles.

Even had Section 816 not been amended in 1946, Federal statutes prohibiting assignment are not applicable to those which arise by operation of law or to those founded upon equitable principles, but relate solely to *voluntary* assignments.

Employers' Fire v. U. S. (C. C. A. 9), 167 F. 2d 655;

Aetna v. U. S. (1948), 170 F. 2d 469;

U. S. v. So. Carolina (1948), 171 F. 2d 893.

(3) This clause expressly limits the exemption under Section 454a to the "claims of *creditors*." Angel does not assert any claim as a *creditor* of Lilly; appellant claims that she owns one-half of the insurance or, in the alternative, that Lilly holds such half in trust for appellant. She also asserts that the insured's designation of Lilly as beneficiary was void as to her vested one-half community interest. The Courts have repeatedly held that unless a debtor-creditor relationship exists, the exemption under Section 454a (and former Section 454), limited as it is

to "claims of creditors," is inapplicable. Some of such cases are:

Gaskins v. Security Bank (1939), 30 Cal. App. 2d 409, 86 P. 2d 681;

In re Flanagan (1940), 31 Fed. Supp. 402;

Schlaeffler v. Schlaeffler (1940), 112 F. 2d 177 (under similar statute);

In re Bagnall (1947), 238 Ia. 905, 29 N. W. 2d 597;

In re Giambastiani (1934), 1 Cal. App. 2d 639, 37 P. 2d 142;

Hannah v. Hannah (1940), 191 Ga. 134, 11 S. E. 2d 779;

Stirgus v. Stirgus (1935), 172 Miss. 337, 160 So. 285 (holding that "creditor," in Section 454 [now Section 454a], contemplates an ordinary contractual obligation or statutory debt and not a claim, as here, arising by operation of law);

Arms v. Arms (1935), 260 Ky. 634, 86 S. W. 2d 542;

Stone v. Stone (1934), 118 Ark. 622, 67 S. W. 2d 189;

In re Gardner (1936), 220 Wis. 493, 264 N. W. 643;

Tully v. Tully (1893), 159 Mass. 91, 34 N. E. 79;

Gainey v. Bank (1933), 176 Ga. 796, 168 S. E. 877;

Bostrom v. Bostrom (1931), 60 N. D. 702, 236 N. W. 733;

Hines v. McKensie (1933), 216 Ia. 1388, 250 N. W. 687 (“A ‘creditor’ is a person to whom a debt is owing by another person”);

Hollis v. Bryan (1932), 166 Miss. 874, 143 So. 687.

In each of these cases Section 454a (or its predecessor, Section 454) and the limits of the exemption thereby afforded, was directly before the Court (except in the *Schlaeffler* case, where a similar statute was involved) and in each case it was held that the relationship there established, such as a wife seeking alimony, the right of a child to paternal support, the right of a guardian for reimbursement, was *not* a debtor-creditor relationship and the exemptions created by Section 454a were inapplicable.

Appellees (Appellee's Brief p. 11) cite *Culp v. Webster* (1937), 25 Cal. App. 2d Supp. 759, 70 P. 2d 273, where an admitted *creditor* of a veteran sought to levy upon proceeds of Adjusted Service Bonds under a money judgment, and cite *Pagel v. Pagel* (1934), 291 U. S. 473, 54 S. Ct. 497, where the sole question related to the claim of an admitted *creditor*. They also cite *Lewis v. U. S.*, and *Lawrence v. Shaw*, but neither are in point on this subject.

(4) This clause relates to the preceding words “claims of creditors.” The words “attachment, levy and seizure” all relate to the normal aids to enforce judgments for the collection of money demands.

Thus, an “attachment” is a proceeding or writ, the object of which is to hold property to abide the order of the Court for the payment of a money demand.

7 C. J. S. 185.

A “levy” is the raising of the money for which an execution has been issued.

Bouvier's Law Dictionary, p. 694.

And a “seizure” is the act of taking possession of the property of a person by a judicial officer, to pay a certain sum of money by virtue of an execution.

Id., p. 1099.

The words “by or under any legal or equitable process whatever” obviously relate wholly to “attachment, levy or seizure,” and were used as an implementation of those words, to afford the fullest protection against claims and actions upon money demands by *creditors*.

(5) The repetition of the word *claims* in this clause emphasizes that Congress did not intend Section 454a, made generally applicable to National Service Life Insurance by Section 816, Title 38, U. S. C. A., to apply under circumstances as here exist.

Finally, as the Chief Judge of the District Court, Southern District of California, held in *Hoeppel v. Westover* (1948), 79 Fed. Supp. 794, the exemptions created by Section 454a cannot be extended, through liberality of construction, beyond the plain language of that section.

II.

State Community Property Laws ARE Applicable.

This point is not one of first impression. In addition to being upheld by the California courts (*Wissner v. Wissner*, 89 A. C. A. 857, 201 P. 2d 837, hearing denied by California Supreme Court), the United States Court of Appeals, Fifth Circuit, in 1930, reached a like conclusion in *U. S. v. Robinson*, 40 F. 2d 14, wherein it was held that the community property laws of Louisiana must alone determine the respective rights of the adverse claimants to the deceased soldier's insurance. There, as here, the wife of the insured was not designated by him as beneficiary. The Fifth Circuit held:

"It is the settled law of Louisiana that the proceeds of an insurance policy taken out during marriage belongs to the community" (*loc. cit.* p. 16).

"The law of Louisiana controls, it being the domicile of the insured" (*loc. cit.* p. 17).

The judgment of the District Court was reversed, with direction that judgment be entered awarding the widow one-half of the deceased's insurance, which is precisely the relief contended for, here, by appellant.

Succession of Lynch v. U. S. (1936), 17 Fed. Supp. 674, follows and cites *U. S. v. Robinson*, and holds that the community property laws of the State of the deceased veteran's domicile control. No appeal was taken.

The United States, in *U. S. v. Primilton* (C. C. A. 5, 1935), 76 F. 2d 555, insisted, on appeal from an adverse judgment (as defendant in the lower court) that the insurance *was* governed by the law of the insured's domicile and *was community property* and the appellee United States therein relied upon *U. S. v. Robinson*.

In *U. S. v. Rose* (Texas, 1933), 57 S. W. 2d 350, the evidence showed that the veteran and his wife were residents of Oklahoma, before and after his enlistment and the Court held that the division of the insurance in effect on his death was controlled by the law of his residence (Oklahoma), found that, as here, the premiums were paid from community earnings, and awarded one-half of the insurance to the widow. Appellee, United States, was a party to that action. *U. S. v. Robinson*, above, is cited with approval.

In *Succession of Jones* (1936), 185 La. 378, 169 So. 440, all premiums were paid during wedlock out of the soldier's pay, which, as here, was held to be community property of soldier and his wife, both of whom were residents of a "Community Property" state. The Court further held that such insurance became "a community asset," and that the wife "was entitled to one-half thereof as the surviving spouse in community." *U. S. v. Robinson* is cited with approval.

U. S. v. Robinson is also cited, with approval, in:

Beebe v. Moormack Gulf Lines (C. C. A. 5, 1932),
59 F. 2d 319;

Fulton Mills v. Fernandez (La. 1935), 159 So.
339.

Appellee United States places reliance upon *James v. U. S.* (D. C., S. D. Cal. 1947, unreported), setting forth excerpts from Judge Harrison's Findings and Conclusions of Law at pages 6-11 of Appendix to its brief.

The District Court found that the insured and his wife were residents of *Texas* and that no fraud had been alleged or proved as having been practiced between them. In holding that the surviving widow had no "community

property" interest in the insurance, the trial court followed and correctly applied the community property laws of Texas. Had the lower court likewise applied the community property laws to the case (*Pack v. U. S.*) now before you, appellant would have been awarded the full relief to which she is entitled.

Under *Texas* law the wife does *not* have a vested one-half interest in life insurance purchased with community funds, as she is given under California law.

Under Texas law the wife has but an expectancy (13 Vernon's Texas Civil Statutes, Title 75, Article 4619) and the wife under Texas law, cannot claim the proceeds of an insurance policy on the life of her husband, even though the premiums were paid wholly out of their community property, unless the naming of some third person as beneficiary was done with the express intent of defrauding her.

Jones v. Jones (Civ. App.), 146 S. W. 265;

Northwestern Life v. Whiteselle, 188 S. W. 22;

Howard v. Howard (1941), 158 S. W. 2d 591;

Volunteer Life v. Hardin (1946), 145 Tex. 245,
197 S. W. 2d 105, 168 A. L. R. 337.

The construction of a state statute by the highest court of the state is binding on a Federal District Court.

Metropolitan Life v. Skov (1943, Ore.), 51 Fed.
Supp. 470 (community property interest of wife
under insurance contract).

In the *James* case, above, since the Court correctly applied Texas law in denying the widow any community interest in the insurance, whatever else is stated in its decision is *dicta*.

In every reported case decided in either state or federal courts, with the sole exception of *Barton v. U. S.*, 75 Fed. Supp. 703, where the insured was domiciled, as here, in a "community property" state, and the question of the widow's community interest in the insurance was squarely before the Court, concerning insurance issued by the appellee United States, state law was applied, and the District Court erred in not applying such laws of California, under the stipulated facts in this case, and in entering judgment that appellant take nothing.

Notwithstanding the great weight of the decided cases to the contrary, wherein the foregoing was directly upheld, and wherein state law *was* applied in determining the respective rights of the conflicting claimants, appellees argue that such decisions must all be erroneous, citing *Beach v. U. S.*, 79 Fed. Supp. 747 (Appellee's Brief p. 14), which decision cites no authority in support of the portions appellees have quoted, and which case has not been cited as an authority on any point. Another District Court reached an opposite conclusion and applied local law in determining the status of a beneficiary: *Brown v. U. S.* (1947), 72 Fed. Supp. 153, which was affirmed (C. C. A. 3), 164 F. 2d 490; cert. denied, 333 U. S. 873.

In *Cassarcello v. U. S.*, 279 Fed. 396 (Appellee's Brief p. 6), the Circuit Court refused to follow a local statute which, by its express terms, excluded insurance issued by the United States, and hence was inapplicable.

In *Lewis v. U. S.*, 56 F. 2d 563 (Appellee's Brief pp. 11, 14, 15), the Federal Court *applied* local law which

made a change of beneficiary executed on a Sunday, voidable, but held that, under the facts, insured had affirmed such act, and hence such change was valid between contesting claimants. Appellant in that case claimed the change of beneficiary was void, under local law. The Court applied local law. Here, Angel claims the designation of beneficiary void under local law (as to one-half of the insurance).

“When the Government goes into the business of insurance, it is permissible to apply to it the rules applicable to (private) insurance companies so far as transactions relating to insurance are concerned.”

Mikell v. U. S. (C. C. A. 4, 1933), 64 F. 2d 310;

Brown v. U. S. (C. C. A. 9, 1933), 65 F. 2d 65;

Collins v. U. S. (C. C. A. 10, 1947), 161 F. 2d 64,
67 (cert. denied 331 U. S. 859).

Lawrence v. Shaw (1937), 300 U. S. 245, 57 S. Ct. 443, relied upon by appellees (and in *Barton v. U. S.* and *Johnson v. Shelton*) related only to the exemption from taxation under Section 454a. It may be conceded that Congress had power to enact all of Section 454a, and that the whole thereof is the “supreme law of the land,” *but*, as appellant has shown, the prohibition as to assignment, contained in Section 454a, is expressly inapplicable to assignments under Section 816 between a beneficiary and the insured’s widow and the exemption features of Section 454a are wholly inapplicable.

White v. U. S. (1926), 270 U. S. 175, 46 S. Ct. 274, is not in point, since appellant's claim is not as a named beneficiary, but arises out of operation of law, and is squarely based upon the fact (a) that one-half of the community insurance vested in her, and (b) that the designation of her mother-in-law, Lilly, as beneficiary, was void as to one-half of the insurance.

U. S. v. Williams (1937), 302 U. S. 46, 58 S. Ct. 81, also cited by appellees, holds, that an agreement between the insured and a beneficiary not to discontinue the insurance is not binding on the insurer (the United States) who had no knowledge of the agreement, did not consent to it and was not a party to it, and gives no comfort to appellees. It is abcdarian that a like result would have followed had the insurer been a private company. While there is *dicta* indicating that a soldier's pay is a gratuity since the sovereign could make everyone serve without pay, the United States taxes such pay as income, and if it were a gift, it would be tax-exempt to the donee. In *Pack v. U. S.*, here, it was stipulated that the Court found that the insured received earnings, which was the community property of himself and appellant [Tr. 24, both paras. II].

In *Wissner v. Wissner*, above, the effect of the Fifth Amendment is discussed. In *Lynch v. U. S.* (1934), 292 U. S. 571, 54 S. Ct. 840, the Supreme Court points out that these policies are legal obligations, although not entered into for gain, have the same dignity as other contracts of the United States, and "*are property and create vested rights,*" entitled to the full protection of the Fifth Amendment.

III.

**Appellee United States Not Concerned With Separate
Controversy Between Angel and Lilly.**

The appellee United States is a mere stakeholder. It admits that it issued the insurance, that the policy was in full force when it matured by reason of the insured's death, and that it is obligated to make payment thereunder. Payment of one-half of the proceeds to Angel and the other half to Lilly will not increase its aggregate liability by one cent. It is confronted with conflicting claims asserted by Lilly and Angel, and will be protected by a final judgment (Section 445, Title 38, U. S. C. A.).

Appellant's first "cause of action" seeks one-half of the community insurance on the ground that such half is her property and that the insured's designation of Lilly was void, as to appellant, insofar as it might relate to such one-half of the insurance. (As stated by appellees, she has abandoned that part of her claim which alleged that the insured had made a written change of beneficiary in her favor.)

Appellant's second "cause of action" is against appellee, Lilly, alone, and appellant is not seeking to establish a trust against the United States and it is not concerned with the outcome of appellant's separate cause of action against Lilly.

Bostrom v. Bostrom (1931), 60 N. D. 792, 236 N. W. 733;

Calhoun v. Ussery (1930), 46 F. 2d 495.

In its brief, the United States (p. 18) refers to a "trustee" when it is the named beneficiary; but, here, Lilly is a trustee by operation of law and not one created by any will, deed of trust or other writing. Its arguments

that because the National Service Life Insurance Act doesn't expressly mention trustees by operation of law or involuntary trustees under the application of established equitable principles, no such relationship can exist, is much the same as its argument that as the Act doesn't expressly mention the community property rights of a surviving widow who can establish such rights, that such rights cannot exist. Such arguments might be thus answered: neither does the Act make any express provisions to the contrary (assuming that, notwithstanding the Fifth Amendment, Congress had the constitutional power to so provide). A further answer is found in the authorities cited by appellant under her Point II, above, and in her Point II, pages 11-14 of her opening brief.

While appellee United States blandly states "there is no authority of law to compel the appellee, Lilly Pack, to make an assignment in favor of the appellant," without citing any authority, it is Hornbook law that a resulting or constructive trustee may be required, under the equity powers of a court, to make a conveyance or execute an assignment to the person entitled thereto of property wrongfully withheld from or belonging to such person, and direct that the Clerk of the Court do so, in the trustee's name and stead, should the trustee fail or refuse to do so. There is nothing in Section 816 which states that the assignment thereby permitted *must* be made voluntarily, and *cannot* be made in response to a proper direction from a District Court.

Dated: April 6, 1949.

Respectfully submitted,

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No. 12139

IN THE

United States Court of Appeals
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ANGEL L. PACK,

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Appellees.

APPELLANT'S PETITION FOR REHEARING.

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No. 12139

IN THE

United States Court of Appeals
FOR THE NINTH CIRCUIT

ANGEL L. PACK,

Appellant,

vs.

UNITED STATES OF AMERICA, and LILLY PACK,

Appellees.

APPELLANT'S PETITION FOR REHEARING.

To the Honorable, the Court of Appeals for the Ninth Circuit:

Comes Now the Appellant, Angel L. Pack (plaintiff below), and respectfully petitions for a re-hearing of the above-entitled appeal, and for a reconsideration of and modification of the judgment of this Court, wherein this Court affirmed the judgment of the District Court, *in toto*.

Plaintiff's complaint contained three counts.

The *first* count need not be considered, as appellant stipulated to facts which negatived relief thereunder.

The *second* count of the complaint was against both the Government and appellee Lilly Pack, wherein appellant sought to assert a vested interest in proceeds of National service Life Insurance, based upon the community prop-

erty laws of California. The majority opinion held that such right *could not be asserted against the Government*.

The *third* count [Tr. 5], named appellee Lilly Pack as the *sole* defendant, sought to impress a trust upon the proceeds of the insurance as against the mother, Lilly (the named beneficiary), in favor of the wife, Angel, petitioner herein, based upon her community interest under the community property laws of the State of California, or otherwise afford her protection against the attempted wrongful gift of her vested interest to the mother, without the wife's consent, the premiums having been wholly paid with community funds of the deceased insured and the wife.

Appellant, under the third count (brought against the mother, as the *sole* defendant) sought relief and protection against such unjust enrichment, in the light of the admitted fact that no payments had yet been made to the mother under the insurance, to require the mother to make an assignment to the wife of one-half of the insurance, as authorized by 38 U. S. C. A. 816, upon equitable principles which are well established.

The assertion of such right, by petitioner, against the named beneficiary, was brushed aside in the majority opinion, upon jurisdictional grounds, none of which were urged or raised below, or considered by the trial Court, or urged by the appellees in their briefs. This Court stated, in the majority opinion:

“There was no jurisdiction to determine whether the proceeds, once received, should be held under some kind of a trust for the benefit of the appellant, or

whether Lilly Pack should be compelled to execute an assignment of one-half [of] the proceeds to the appellant, assuming such an involuntary executed assignment to be authorized by 38 U. S. C. A. 816.”

This petition for rehearing is based upon the ground that the District Court *did* have jurisdiction to pass upon the claim of petitioner against appellee Lilly Pack, as asserted against her, alone, in the *third* cause of action of appellant’s complaint. It is the view of petitioner that the dissenting opinion, filed by Judge Stephens, clearly asserts jurisdictional elements presented by such claim, which were apparently entirely overlooked in the majority opinion.

None of the grounds which the majority opinion asserts, as to want of jurisdiction over the third count, or parties, were presented in the Court below, or upon this appeal, by appellees, and appellant has not been given any opportunity to meet any of them, which the majority of this Court raised *sua sponte*.

While lack of jurisdiction may be raised at any time, appellant earnestly insists that all of the grounds upon which the majority opinion asserts such lack of jurisdiction are, in fact, matters in abatement and are procedural, and do not go to jurisdiction, and could not be raised for the first time, upon appeal.

Appellant believes that the majority of this Court overlooked the clear waiver, in the record, by appellees, as to each of the matters which this Court has urged against

the maintenance of appellant's third count, that each of them may be waived by litigants, and that, after trial, a Circuit Court is without power to make and rule upon matters in abatement and procedural motions which were waived by the litigants, themselves.

Appellant feels that she should at least *be given the opportunity* of presenting her arguments, aimed at these new points raised and decided by the majority of this Court, *ex parte*.

Since the majority opinion affirms, *in toto*, the judgment of the District Court, rendered against appellant as to all three counts of her complaint, *on the merits*, it is feared that the decision, in its present form, may be *res judicata* as against appellant, Angel L. Pack, upon a subsequent assertion of her claim against appellee Lilly Pack, in a separate action, even though this portion of the appeal was denied solely upon jurisdictional grounds.

Petitioner earnestly asserts that the correct rule to be applied to the issues raised by the *third* count of her complaint and by the answer of Lilly Pack, thereto, is that contained in the dissenting opinion, wherein Judge Stephens stated:

“By appropriate provision in the judgment, the district court should have decreed protection to the wife as to any interest she should have in benefits which may be paid to the mother.”

In this connection, it is to be pointed out that the District Court *did* take jurisdiction and, upon the stipulated

facts, *did* define the rights of both claimants under the *third* count, it being the position of appellant that the District Court erred in its conclusions of law and judgment that plaintiff, below (appellant, here), take nothing as against Lilly Pack under *any* of the counts of her complaint.

These views will be emphasized in the argument presented herewith.

In her limitation of this petition to her claims against appellee Lilly Pack, alone, under the *third* count of her complaint (thus eliminating all reference to the propriety of the determination, by this Court, that the vested right of appellant as to one-half of the insurance, by reason of the California community property laws, "cannot be asserted *against the Government*"), appellant does not concede that such determination, which relates *solely* to her second count of her complaint, is correct. [Compare *Schaull v. U. S.*, 161 F. 2d 891, which directly holds that such a claim *can* be asserted against the Government, and impressed a trust upon the proceeds of Government insurance.]

Importance of Decision.

If the judgment of this Court is to stand, as rendered:

(1) Appellant may be barred from ever again filing any action against Lilly Pack, to recover under her admitted rights (*Wissner v. Wissner*, 89 A. C. A. 857, 210 P. 2d 837, hearing denied by Calif. Supreme Court), and to impress a trust (*Schaull v. U. S.*, 161 F. 2d 891), on the grounds that the judgment of the District Court, so affirmed (which judgment was upon the merits), was *res judicata*.

(2) This Court did not pass upon the question as to whether or not appellant's *third* count stated a claim against Lilly Pack, the mother, upon which relief could be granted, or whether or not the judgment of the District Court, denying appellant wife all relief, was sound, leaving wholly unsettled the timely, important and pressing question as to whether the Federal Courts may grant relief to a wife as against the beneficiary named without her consent, where the insured and his wife were residents of a "community property" state and all premiums (as here) were paid with community property, the wife did not consent to such designation, and the Government is not a party to the action.

Appellant respectfully urges that the question should not have been by-passed on jurisdictional grounds (which grounds appellant hopes to demonstrate are not tenable).

This is a case of *first impression* in the Federal appellate Courts.

According to the law digests in Vol. III of *Martindale-Hubbell Law Directory*, 1948, every state in this Circuit, excepting Montana, has or has had community property

statutes under which a wife could assert the identical rights which appellant asserts against appellee Lilly Pack.

Mr. Hoffmann, one of appellant's counsel, is National Judge Advocate of the Disabled American Veterans, a Federal corporation created by an Act of Congress (36 U. S. C. A. 90a-90k, as amended), and had hoped that both of the questions squarely raised by the appeal would be as squarely decided, viz.:

(a) Can the wife assert her vested interest in National Service Life or other Government insurance, as against the Government, in an action brought under 38 U. S. C. A. 445 and 617? (Point I, Appellant's [Opening] Brief.)

(b) If not, then, *as between the wife and the named beneficiary*, designated by the husband without the wife's consent, does the latter hold one-half of the proceeds in trust for the widow, where the insurance premiums were paid wholly from community property of the wife and the insured? (Point II, Appellant's Brief.)

In the Court, below, the issues were narrowed to those two specific questions, and to none others. All of the facts required for a clear-cut, unequivocal determination of each of those two questions were squarely pleaded and stipulated. No question as to the weight of the evidence entered into the lower Court's determination of the law, or upon the appeal.

The determination of both of those questions is of utmost concern to thousands of widows of servicemen who lost their lives during World War II in the defense of their country, who were residents of the six "community property" states in this Circuit. It is of utmost con-

cern, also, to those widows who were residents of other states having "community property" laws, like California's, for a final determination of those two questions by this Court would undoubtedly be followed in other Circuits.

These widows fall into two general classifications: (1) they were married to the serviceman *before* the Government insurance, naming another as beneficiary, was issued, or (2) married the serviceman *after* the issuance of the policy.

Under the first classification, many servicemen knew the community property of the state of their residence, and also knew that they were not permitted to name *two* beneficiaries under one Government policy. Desiring, however, to leave one-half of the insurance to a parent, they named the parent as beneficiary, relying upon the fact that the state law gave the wife a vested interest in the other half, and thereby intended to protect her to that extent.

Under the second, the servicemen named a parent as sole beneficiary, when unmarried. The decisions in all Circuits demonstrate that many of them actually changed such designation, after marriage, from the parent to the bride, but that due to the circumstance that several millions of men were in the armed forces, and a large majority were serving overseas, under combat conditions, their written change of beneficiary was lost or misfiled, and never reached the Veterans' Administration. Many, too, fully intended to make such a change of beneficiary, but were killed in action or died before being able to do so. The wife's vested interest would not be to a full one-half, under this classification, in most instances, but would be based upon the proportion of premiums paid before and after

marriage. However, the wife would be afforded some protection and security, and the desires of the serviceman would not be thwarted, if an affirmative answer is clearly made to the second question, above posed, and directly presented upon this appeal.

In the instant case, appellant comes directly within the foregoing first classification. She is the mother of the insured's two children [Par. IV, Tr. 3 and 34]. Under the broad, unrestricted general affirmance of the judgment of the trial Court, by the majority of this Court, appellant may be forever barred from recovery against Lilly (upon the latter's plea of *res judicata*). If not, appellant urges that the filing of a new suit is unnecessary, the District Court having jurisdiction over the cause and the parties, under the third count of the complaint, and to require her to unnecessarily file such suit would subject her to great delay and expense in filing suit against Lilly in Missouri (unless Lilly should *again* consent to be sued in Southern California).

Counsel are limited to an attorney's fee of 10% (38 U. S. C. A., 551 and 817), payable in driblets and then only if the appellant eventually prevails, even though this appeal finally is decided by the Supreme Court. They have advanced most of the costs of the appeal. But they, like the leading nationally chartered veterans' organizations, are desirous of having *both* of the two questions hereinbefore urged clarified and determined, *on the merits*, in the public interest.

Summary of Argument.

I.

The District Court had jurisdiction to determine the issues between the wife and mother, under the third count.

II.

Joinder of the third count did not oust the District Court of jurisdiction and, if improper, the error, if any, was waived.

III.

Even *if* joinder of third count was error, and not waived, court was not thereby ousted from jurisdiction.

IV.

This Court is without power to consider error relating to matters in abatement which did not involve jurisdiction.

ARGUMENT.

I.

The District Court Had Jurisdiction to Determine the Issues Between the Wife and Mother, Under the Third Count.

Jurisdiction as to the third count of the complaint (as distinguished from *venue*), under which appellant asserts a claim against appellee Lilly Pack, alone, and as to which the Government is not named or made a party, is founded upon Sections 1331 and 1332, Title 28, U. S. C. A. (new) [28 U. S. C. A. 41(1) prior to the effective date of the new Judicial Code], as well as upon 38 U. S. C. A. 445. (App. Op. Br. p. 2.)

The matter in controversy under that third count exceeds \$3,000.

The action is between citizens of different states. It was both pleaded and stipulated by all parties that appellant was and is a citizen of California and that Lilly Pack is a citizen of Missouri. [Tr. p. 22, pars. VIII and X; p. 34; p. 15, par. IV.]

Consequently, all of the jurisdictional requirements of Section 1332, Title 28 U. S. C. A., were squarely met. It is significant that neither of the appellees have ever claimed otherwise.

Lilly Pack filed a cross-claim, affirmatively asserting all the jurisdictional requirements of Section 1332. [Tr. pp. 14, 15.]

This Court, in the majority opinion, states that Lilly "was presumably brought under the jurisdiction" of the District Court under the special provisions of 38 U. S. C. A. 445. That is not correct. She was originally named as a defendant [Tr. pp. 2-7], and the complaint was not

amended; she was *not* brought in as a third-party defendant; she was served with process; she appeared and filed her answer to all three counts, without reservation, and *filed no objections* as to venue, joinder, or otherwise.

If appellant is but given the opportunity, she will urge, as she does now, that this Court also failed to fully consider that the District Court *had jurisdiction* to award and grant to appellant the protection and relief which she sought under *both* the second and third count; in other words, that by reason of 38 U. S. C. A. 445 and 817, the District Court was given express and full authority to adjudicate *all claims* asserted under the insurance, including the claim of appellant that Lilly Pack was the trustee of appellant as to one-half of the proceeds, and had *jurisdiction* to decree that the Government pay such one-half directly to appellant or, at least, that it had jurisdiction to require Lilly to qualify as a trustee, give bond, and direct her to make payment of one-half of each installment of insurance as received by her; and it had *jurisdiction* to require Lilly to make an assignment of one-half of the insurance to appellant, and thus fulfill her duties as an involuntary trustee.

Schaull v. U. S. (C. C. A.-D. C., 1947), 161 F. 2d 891.

The *Schaull* case is directly in point, and appellant has been unable to find any decision to the contrary.

Where the challenge is merely of the jurisdiction of the Court for the particular district, the objection is to *venue*. This privilege (of not to be sued elsewhere), can be waived.

Peoria etc. Ry. v. U. S., et al. (1924), 263 U. S. 528, 535, 44 S. Ct. 194.

Chapter 85, Title 28 U. S. C. A. (New), "District Courts; Jurisdiction," which includes Sections 1331 and 1332, relates solely to the *jurisdiction* of those Courts, and nowhere therein is reference made to venue.

Chapter 87, which follows, deals solely with "District Courts; Venue," and by Section 1406 (Title 28, U. S. C. A.) expressly provides:

"(b) Nothing in this chapter shall impair the jurisdiction of a district court of *any* matter involving a party *who does not interpose timely and sufficient objection to the venue.*"

The "Reviser's Notes" to the new Title 28, commenting upon Section 1406(b) thereof, above quoted, state:

"Subsection (b) is declaratory of existing law. (See *Panama R. R. Co. v. Johnson*, 1924, 44 S. Ct. 391, 264 U. S. 375.) *It makes clear the intent of Congress that venue provisions are not jurisdictional but may be waived.*" (Emphasis added.)

A party waives the privilege of venue by pleading to the merits, without raising any objection to venue, as did Lilly Pack.

Department Water & Power v. Anderson (C. C. A., 9, 1938), 95 F. 2d 577, 582 (cert. den. 305 U. S. 607);

Panhandle etc. Co. v. Federal Power Commission (1945), 324 U. S. 635, 639, 65 S. Ct. 821:

"The right to have a case heard in the court of proper venue may be lost unless seasonably asserted.

It may be waived by any party, *including the government.*”

Schaull v. U. S. (C. C. A.-D. C., 1947), 161 F. 2d 891, at 894, *an action based on a Government insurance policy, which sought to impress a trust upon the proceeds*, wherein it held:

“Two defendants . . . answered and pleaded to the merits without reservation; they are for that reason also unable to challenge the Court’s jurisdiction over them.”

Neirbo Co. v. Bethlehem Shipbuilding Corp. (1939), 308 U. S. 165, 60 S. Ct. 153 (cited in dissenting opinion of Judge Stephens).

II.

Joinder of the Third Count Did Not Oust the District Court of Jurisdiction and, If Improper, Error, If Any, Was Waived.

Appellee Lilly Pack did not make any objection to the joinder of the third count.

A defendant may elect to defend two or more actions, or unrelated counts, in one suit, and by pleading to several counts, without objection, irrevocably makes such election and waives all defects as to joinder.

Rule 12(h), Federal Rules Civil Procedure:

“A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply” (followed by exceptions not here applicable).

Capital Fire Ins. Co. v. Langhorne (C. C. A. 8, 1948), 146 F. 2d 237, at 242-243.

III.

Even If Joinder of Third Count Was Error, and Not Waived, Court Was Not Thereby Ousted From Jurisdiction.

The appellees at no time raised any objection as to joinder of causes or parties—whether in the Court, below, or here.

The majority opinion of this Court attempts to justify the denial of all relief to appellant, upon her third count against appellee Lilly Pack, *only*, on the ground that to permit the joinder of that count would destroy some immunity of the Government against suit, although that opinion, elsewhere, states that the claim of appellant, under the third count is “not a determination of a claim against the United States,” and although the Government is not named as a defendant under that count and no relief is requested against it, thereunder.

Moreno v. U. S., 170 F. 2d 128 is cited in support of such conclusion. It is respectfully urged that such case is not in point and may be readily distinguished.

In the *Moreno* case, plaintiff sought to file an amendment to a complaint brought solely under 38 U. S. C. A. 445, for *alienation of affections*—a cause entirely foreign to the subject-matter of the action. As stated in that opinion, a trial thereon would have delayed and complicated the case. The evidence under the amendment could not have related, whatsoever, to the question of the plaintiff's rights under the insurance.

Also, in the *Moreno* case, the third-party defendant, Mrs. Bathurst, *objected* to the filing of the amendment. The Court had discretionary power to allow or deny the

amendment, under Rule 15(a), F. R. C. P. She did not consent to be sued in Massachusetts (she was a resident of New Jersey), under the proposed new count. And Rule 14(a), F. R. C. P., expressly prohibited bringing her into the action under the new count, as a third-party defendant, over her objection.

But, here, in *Pack v. U. S.*, the situation is wholly different.

Lilly Pack was named a defendant as to all three counts. *She made no objection* on the ground of misjoinder of causes or parties. She expressly consented to be sued in the Southern District of California. She pleaded, generally, to all three counts. She elected to defend all three. The third count related, directly, to the subject matter of the first two. *And the Government made no objection.*

Finally, the issue was neither complicated, nor delayed, by the joinder. All the facts were stipulated. The trial took less than one-half hour, on evidence applicable to all three counts. All that is left to be done is to remand the action, with instructions to the trial Court to grant appellant the relief to which she is entitled under the third count.

There is nothing in the *Moreno* case which even suggests that had the third-party defendant not objected to the amendment and urged improper venue as to the new cause of action sought thereby to be imposed, that the Court would not have had jurisdiction, particularly if she had pleaded to the amendment, had it been allowed. There is no question that a motion for a severance, made by the Government, would have been granted, had the amendment been allowed, and, properly under the facts and circumstances of that case.

Had this Court given appellant an opportunity to have done so, she would have called your Honors' attention to the recent decision of

Shaull v. U. S. (C. C. A.-D. C., 1947), 161 F. 2d 891,

which is almost on "all fours" with *Pack v. U. S.*

In that case, as here, appellant, in an action against the beneficiary *and* the Government, sought to have it adjudicated that the named beneficiary held the proceeds from National Service Life Insurance *in trust* for appellant's children under an orally declared trust. There, as here, all of the facts were established. The only factual difference between the *Shaull* and *Pack* cases is that the trust was created by parol, in the *Shaull* case, whereas in the *Pack* case it was created by operation of law.

The Circuit Court for the District of Columbia reversed a judgment against appellant, and directed the trial Court to enter judgment recognizing and enforcing the trust as against the trustee, and directing the Government to pay the proceeds to him, *as trustee*, after he had qualified and given bond.

The Appellate Court, in the *Shaull* case, directly held that where jurisdiction is once acquired under 38 U. S. C. A. 445 (as here), the Court continues to retain jurisdiction to adjudicate *all claims* with respect to the policy, including an adjudication that the named beneficiary was, in law, a trustee and was not entitled to the proceeds to deal with as he saw fit.

The *Shaull* case—directly in point—also squarely holds that where the defendants "answered and pleaded to the

merits without reservation, they are for that reason also unable to challenge the court's jurisdiction over them."

Shaul v. U. S., 161 F. 2d 891, at 894.

The joinder was proper, regardless of the fact that one of the counts stated a cause of action against only one defendant (Lilly).

Hooper v. Lennen & Mitchell, 52 Fed. Supp. 319, affirmed (C. C. A. 9, 1944), 146 F. 2d 364.

Misjoinder of parties is not a ground for dismissal of an action. *If* objection had been timely made, on the ground that there was an improper joinder of the Government with another party, the claims could be separated for trial.

Lynn v. U. S. (C. C. A. 5, 1940), 110 F. 2d 586.

Nor may a complaint be dismissed and, as here, a party deprived of relief, because of a misjoinder of causes of action. If the causes cannot be conveniently tried together, separate trials should be ordered.

Schell v. Leander College (C. C. A. 8), 2 F. 2d 17.

The District Court did not consider that the trial of all three counts, below, would be impractical or inconvenient, or cause delay. Instead, all three were tried expeditiously, and at one time, *all without objection from any party, including the Government.*

Even IF objection had been timely made, below, and even IF the trial Court had found that a severance should have been ordered, he nevertheless should have later

ordered the actions tried together, since all counts would have common questions of fact, and law.

Rules 21 and 42(a), F. R. C. P.;

F. H. A. v. Christianson (1939), 26 Fed. Supp. 419.

The only different end result would be that there would have been two separate appeals made, instead of one. But, if the majority opinion is to stand, appellant has been denied all relief, wholly without regard to the merits of her claim, upon technicalities not raised by either of the appellees, either in the trial Court, or upon this appeal.

IV.

This Court Is Without Power to Consider Error Relating to Matters in Abatement Which Did Not Involve Jurisdiction.

The *effect* of the majority opinion is the same as IF appellee Lilly Pack had made timely objection, in the trial Court, seeking a dismissal as to the third count on the ground (1) that it was improperly joined; (2) that the venue would lie only in Missouri, and (3) that Lilly had been improperly joined as a defendant under that count and that the Government had also made a motion to dismiss the third count, and the pending appeal was one from an order of the trial Court dismissing or refusing to dismiss the third count on one or more of such grounds. *No such objections or orders were made, below.*

As more particularized under Point I, the District Court had jurisdiction over the cause or claim asserted in the third count, and over the parties. Objections as

to venue were waived. Appellee expressly consented to defend all three counts. Neither she nor the Government made a motion to dismiss or lodged any objection as to joinder of causes, joinder of parties, venue as to want of jurisdiction over the parties, or otherwise objected.

Each of such pleas are pleas or matters in abatement.

1 C. J. S., Sec. 1(b), p. 27; Sec. 5, p. 32; Sec. 10, p. 38; Sec. 11, p. 39.

Since the effect of this Court's judgment is actually a reversal, as to the *third* count, predicated solely on "matters of abatement," none of which involve *jurisdiction*, to that extent this Court exceeded its statutory appellate powers.

28 U. S. C. A. (new) 2105:

"There shall be no reversal in the Supreme Court of a court of appeals for error in ruling upon matters in abatement which do not involve jurisdiction."

28 U. S. C. A. 879 (former section):

"There shall be no reversal in the Supreme Court or in a circuit court of appeals upon a writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or for any error in fact."

O'Brien's "Manual of Fed. App. Proc.," 1941 Ed., Chap. XVIII, p. 187, and cases there cited.

Conclusion.

The entire record on appeal—including the reporter's transcript of the half-hour trial—consists of only 37 pages.

The facts were clearly and concisely stated in the pleadings and the findings of fact, and were stipulated to.

Under the third count of the complaint (as to which the Government is not a party, and no relief is sought against it, thereunder), the following facts were stipulated:

1. Clyde and Angel were married in California, in 1932, had two children, and were residents thereof until he died.

2. In 1944, while in the armed forces, Clyde was issued a \$10,000 policy of National Service Life Insurance and named his mother, Lilly, as beneficiary, without the consent of his wife. He died in 1945.

3. All of the premiums were paid with the community property of Clyde and Angel.

4. The Government has as yet made no payments to Lilly under the policy (thereby qualifying her to make an assignment to Angel under 38 U. S. C. A. 816).

5. Angel is a resident of California, and Lilly, of Missouri.

All of the parties admit that, under California's community property laws, Angel has a vested one-half interest in the insurance. (*Wissner v. Wissner*, 89 A. C. A. 857, 201 P. 2d 837, and other cases cited in appellant's opening brief).

The District Court had jurisdiction of the third count, under 28 U. S. C. A. (new) 1331 and 1332 and former 28 U. S. C. A. 41, as well as under 38 U. S. C. A. 445 (*Schaull v. U. S.*, 161 F. 2d 891). Lilly appeared and answered, without objection of any kind. She consented to defend all three counts. She waived any and every objection as to venue. She *and the Government* waived all objection as to joinder.

No severance was requested. No motion to dismiss was made on any ground.

It is urged that appellant should not have her rights cast aside, by a general affirmance, upon technical grounds, each of which was waived by the parties and none of them urged, below, or urged in this Court, and wholly without an opportunity to be heard.

Even IF the Court should have granted a severance (compare *Moreno v. U. S.*, and *Lynn v. U. S.*), had one been requested, appellant could have requested and undoubtedly would have been granted a consolidation, for trial, and her appeal would have squarely presented the same issues which she has raised, but which this Court has felt it should not meet because of non-jurisdictional procedural objections which this Court has raised, for the first time, but which were waived by the parties.

As a result of the majority opinion, following a judgment in the District Court against appellant, on the merits, appellant may be forever barred from again asserting a claim which (as between herself and Lilly), this Court has not passed upon.

Appellant respectfully urges that not only for herself and her two children, but *in the public interest*—in the interest of thousands of other widows of insured fighting men, similarly situated, residing in the “community property” states, that this Court should reconsider its judgment, as to the third count, and, in the words of Judge Stephens, direct the trial Court “by appropriate provision in the judgment” to “decree protection to the wife as to any interest she should have in benefits which may be paid to the mother.”

The facts and the sole question of law under the third count are simple:

“As between the wife and the named beneficiary (assuming that the wife cannot assert her vested interest in Government insurance as against the United States), does the named beneficiary hold the wife’s vested interest in the insurance and its proceeds in trust for the wife, if the insurance was purchased wholly with community property of the wife and the insured, and the wife did not consent to the designation of the beneficiary?”

Appellant has heretofore presented authorities, in her briefs and oral argument, which she believes require an affirmative answer. In all events, she urges that the question be decided *on the merits*, in the public interest, particularly since the point is one of *first impression* in the Federal courts, and will directly concern thousands of other widows similarly situated.

For the reasons given, it is respectfully submitted that the petition for rehearing should be granted, and appel-

lant be afforded the opportunity of meeting the points and issues interposed, *sua sponte*, in the majority opinion, none of which were raised by either of the appellees and which *appellant has never had an opportunity to meet or answer*.

October 4, 1949.

Respectfully submitted,

SYLVESTER HOFFMANN,

IRVING G. BISHOP,

Attorneys for Appellant.

Certificate of Counsel (Rule 25).

We hereby certify that in our judgment the foregoing petition for a rehearing is well founded, and we further certify that it is not interposed for delay.

October 4, 1949.

SYLVESTER HOFFMANN,

IRVING G. BISHOP,

Attorneys for Appellant.

No. 12142

United States
Court of Appeals

for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual, doing
business as CANNON ELECTRIC DEVELOP-
MENT COMPANY,
Respondents.

Transcript of Record

In Two Volumes

VOLUME I.

(Pages 1 to 336, inclusive)

Petition for Enforcement of Order of the
National Labor Relations Board

FILED

APR 29 1949

PAUL P. O'BRIEN,

CLERK

No. 12142

United States
Court of Appeals

for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
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vs.

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In the United States Court of Appeals
for the Ninth Circuit
No. 12142

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual, doing
business as CANNON ELECTRIC DEVELOP-
MENT COMPANY,
Respondents.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 203-87, Rules and Regulations of the National Relations Board—Series 5, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, “In the Matter of Cannon Manufacturing Corporation and James H. Cannon, an individual, doing business as Cannon Electric Development Company and International Association of Machinists, Lodge 311, AFL, Case No. 21-C-2428,” and “In the Matter of Cannon Manufacturing Corporation and James H. Cannon, an individual doing business as Cannon Electric Development Company and United Electrical, Radio and Machine Workers of America, CIO, Case No. 21-C-2474,” such transcript including the pleadings, testimony and evi-

dence upon which the order of the Board was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating James C. Batten, Trial Examiner for the National Labor Relations Board, dated May 24, 1945.

(2) Stenographic transcript of testimony taken before Trial Examiner Batten on May 24, 25, 28, 29, 30, 31, June 1, 6, and 7, 1945, together with all exhibits introduced in evidence.

(3) Copy of respondents' telegram, dated June 18, 1945, requesting extension of time to file brief before the Trial Examiner.

(4) Copy of Trial Examiner's telegram to all parties, dated June 19, 1945, granting extension of time for filing briefs.

(5) Copy of order transferring case to the Board, dated September 14, 1945, together with affidavit of service thereof.

(6) Copy of proposed findings of fact, proposed conclusions of law and proposed order, issued by the National Labor Relations Board on July 12, 1946 (annexed to item 12 hereof), together with copy of affidavit of service thereof.

(7) Copy of respondents' telegram, dated July 17, 1946, requesting extension of time to file exceptions and briefs.

(8) Copy of telegrams, dated July 18, 1946, granting all parties extension of time for filing exceptions and briefs.

(9) Copy of respondents' telegram, dated August 14, 1946, requesting further extension of time to file exceptions and briefs.

(10) Copy of telegrams, dated August 15, 1946, granting all parties further extension of time to file exceptions and briefs.

(11) Copy of respondents' exceptions to proposed findings of fact, proposed conclusions of law and proposed order.

(12) Copy of Decision and Order, issued by the National Labor Relations Board, with Proposed findings of fact, proposed conclusions of law and proposed order annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 24th day of December, 1948.

(Seal) /s/ FRANK M. KLEILER

Executive Secretary, National
Labor Relations Board

United States of America
Before the National Labor Relations Board
Case No. 21-C-2428

In the Matter of

CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual, doing
business as CANNON ELECTRIC DEVELOP-
MENT COMPANY

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, LODGE 311

Case No. 21-C-2474

In the Matter of

CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual doing
business as CANNON ELECTRIC DEVELOP-
MENT COMPANY

and

UNITED ELECTRICAL, RADIO & MACHINE
WORKERS OF AMERICA, CIO

Mr. Charles M. Ryan, for the Board. Mr. David
H. Cannon, of Los Angeles, Calif., for the respond-
ents. Miss Judy Dunks, of Los Angeles, Calif., for
the UE. Mr. Maurice M. Miller, of counsel to the
Board.

DECISION and ORDER

On July 12, 1946, the Board issued its Proposed
Findings of Fact, Proposed Conclusions of Law,
and Proposed Order in the above-entitled proceed-
ings, a copy of which is attached hereto. Thereafter,

the respondents filed exceptions, and a brief in support thereof.

The Board has considered the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, the respondents' exceptions and brief, and the entire record in the case, and hereby adopts as its final decision and order said Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, with the following additions and modifications:

1. Although the respondents except to the proposed finding that the Contact Committee was a labor organization which represented their employees, their brief concedes, for the sake of argument, that the Committee was a labor organization within the meaning of the Act, and argues only that the organization was not dominated or controlled by the respondents. The evidence to which our attention is directed in this connection, however, was considered in detail in the preparation of the proposed finding. The statements contained in the documents cited by the respondents were not disregarded as self-serving statements, but constitute the very basis for our finding that the Contact Committee was a creation of the respondents and that it operated as a bar to the freedom of self-organization guaranteed by the Act. We find the exceptions of the respondents in this connection to be without merit, and affirm the finding that the respondents dominated and interfered with the formation and administration of the Committee, and contributed support to it, within the meaning of Section 8 (2) of the Act.

2. The respondents except to the proposed finding that their enforcement of a no-solicitation rule was marked by disparity of treatment. Counsel for the respondents contends, in the first instance, that the rule in question was reasonable. We have had occasion in previous decisions to point out that the Act does not prevent an employer from making and enforcing reasonable rules to govern the conduct of employees on company time. It is equally clear, however, that any rule designed to prohibit union solicitation by an employee outside of working hours, although on company property, represents an unreasonable restraint upon the exercise by employees of the rights guaranteed by the Act. Such a rule must be presumed to be an unreasonable impediment of self-organization, and therefore discriminatory, in the absence of evidence that special circumstances make the rule necessary in order to maintain production or discipline.¹ Such evidence is not present here.

Irrespective of the nature of the rule, respondents contend that there is no basis for a finding that their enforcement of it was marked by disparity of treatment. We note, however, that their argument in this connection admits by inference the factual basis of the finding and merely asserts that wrongful laxity in the application of the rule to one of the competing organizations could not be cured by the grant of equal treatment to the other.

¹Matter of Peyton Packing Company, 49 N.L.R.B. 828; enforced 142 Fed. 2d. 1009 (C. C. A. 5); cert. denied, 323 U. S. 730.

We find no merit in this contention. Upon the entire record, including, but without limitation, the demonstrated knowledge and partisanship of Superintendent Cromwell with respect to the organization sponsored by Ned Mandella, the undenied testimony of Monjar that her activities on behalf of that organization were never subjected to interference by foremen, although carried on in their presence, and the contrasting treatment of Lawrence Wiley,—and we find ample basis for a finding that the rule in question, whatever the motive which led to its adoption, was directed in practice against UE, and that its application in the manner described was intended by those immediately responsible for its enforcement to discourage membership in that organization, and to encourage adherence to the Cannon Employees Association.

3. The contention of the respondents that their first agreement with CEA was approved by our Regional Office is patently in error. It appears to be based upon the assertion by witnesses for the respondent that copies of the agreement in question were forwarded to the Regional Office, and that the office failed to express any opposition or other opinion with respect thereto. The Regional Office, however, was clearly under no obligation to act in such a situation; its failure to act cannot be described as implied or express approval of the agreement. Indeed, the expression of any opinion with respect thereto, under the circumstances cited by the respondents, would be beyond the authority conferred upon the Board and its agents by the Act.

We find no merit, therefore, in the contention of the respondents that the provision in their agreements with CEA regarding the check-off of dues has received the approval of this Board.

In connection with the proposed order directing the reimbursement of dues checked off to CEA, the respondents argue that they could not properly have publicized the voluntary features of the check-off, on the ground that CEA could have charged them with interference if they had done so. We find this contention to be without merit. The record contains no indication that copies of the agreement in question were ever posted for the information of employees, although such action would appropriately have served the desired purpose. Similarly, a notice couched in purely informative language, designed to explain the obligation of the respondents and the rights of employees under the agreement, could not in itself have been considered interference within the meaning of the Act.

4. The respondents except to statements made in connection with a proposed finding which characterizes letters addressed by James H. Cannon to Harry Bridges, in the spring of 1942, as a vilification of Bridges, the UE, and the type of trade unionism which they were alleged to represent, incorrectly assuming that the proposed finding of a violation of Section 8 (1) of the Act in this connection is based upon the aforesaid letters to Bridges. Our finding is actually based upon "similar statements" embodied in an open letter to the employees.

5. The argument of the respondents in support

of their exception with respect to the present status of CEA, and the present contractual relationship between the respondents and their employees, is apparently based upon the erroneous assumption that the proposed findings with respect to the 8 (2) allegations of the complaint are bottomed in part upon these factors. Upon the present record, however, the relationship of the respondent to MESA is irrelevant to any charge of company domination and interference, and the facts with respect to present contractual relations are set forth merely to complete the history of employee organization at the plants involved herein.

Similarly, the respondents' assumption that we considered the speed of their initial contractual negotiations with CEA as a factor in the proposed finding of support and domination appears to rest upon a misconception of the significance attached to that fact. We do not rely on that fact in the determination that CEA is a company dominated organization, within the meaning of Section 8 (2) of the Act.

6. The argument of the respondents in support of their exception with respect to the separation of Florence Maynard is based entirely upon an admission by Maynard in the letter distributed to employees before her ouster by the Cannon Employees Association. Although Caffarel testified clearly and without contradiction, as noted in the proposed findings, that he had been separated contemporaneously with Maynard, under circumstances which establish that both were discharged, the respondents

have offered no evidence based upon their own records or other reliable testimony to establish that the separation of Maynard occurred under other circumstances. We find the exception of the respondents in this connection, therefore, to be without merit.

7. With respect to the dismissal of Armant, the respondents argue, in effect, that his treatment by the companies before the discharge on which the complaint is abused should be considered as evidence of their good faith in discharging him. While it is true that the respondents failed to act on several earlier requests by CEA for Armant's discharge, the record as a whole does not support the contention that they were finally "forced" to dispense with his services. In their brief the respondents refer to the hearing which proceeded his discharge as an "arbitration" proceeding, although James H. Cannon testified specifically that this was not the case. Similarly, the statement in the brief that "the respondents were faced with the absolute necessity of discharging Mr. Armant upon his being rejected as a member of CEA" is without foundation in the record, because there is no evidence that the Board of Directors of the contracting union had ever taken official action to revoke Armant's membership in that organization.

The remaining exceptions raise no substantial issue beyond those already considered and discussed at length in the proposed findings. We find them to be without merit.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Cannon Manufacturing Corporation, and its officers, agents, successors and assigns, and James H. Cannon, an individual doing business as the Cannon Electric Development Company, Los Angeles, California, and his agents, successors and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of the Contact Committee, by whatever name it may be known, or of the Cannon Employees' Association, or the formation or administration of any other labor organization of their employees, and from contributing financial or other support to the Contact Committee or the Cannon Employees' Association, or to any other labor organization of their employees;

(b) Recognizing the Cannon Employees' Association, or any successor thereto, as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(c) Giving effect to any and all contracts with the Cannon Employees' Association, or to supplements thereto, or modifications thereof, or any superseding agreements;

(d) Encouraging membership in the Cannon

Employee's Association, or any other labor organization of their employees, and discouraging membership in United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, or International Association of Machinists, Lodge 311, unaffiliated, or any other labor organizations of their employees, by discharging or refusing to reinstate any of their employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of their employment;

(e) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Electrical, Radio & Machine Workers of America or International Association of Machinists, Local 311, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or any mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:²

²The Board expressly reserves the right to modify the back-pay and reinstatement provisions of this order if made necessary by a change of conditions in the future, and to make such supplements thereto as may hereafter become necessary in order to define or clarify their application to a specific set of circumstances not now apparent.

(a) Withdraw and withhold all recognition from the Cannon Employees' Association, as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment, and completely disestablish that organization as such representative;

(b) Refrain from recognizing the Contact Committee, by whatever name it may be known, as the collective bargaining representative of any of their employees, in the event that organization should ever return to active existence;

(c) Reimburse all employees, whose dues in the Cannon Employees' Association were checked off by the respondents, for the amounts thus deducted from their wages since February 15, 1945;

(d) Offer to Alvin L. George, Clarence Joseph Armant, Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Monnette Nye, Ada Lish, Eloise Hunt, Clarence William Youngberg, Jr., and Herbert H. Caffarel, immediate and full reinstatement to their former or substantially equivalent positions,³ without prejudice to their seniority or other rights and privileges;

³In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position." See *Matter of The Chase National Bank of the City of New York, San Juan Puerto Rico Branch*, 65 N.L.R.B. 827.

(e) Offer to Florence Maynard immediate and full reinstatement to her former or a substantially equivalent position, in the manner set forth in the proposed findings attached hereto, in the section entitled "The remedy";

(f) Make whole Alvin L. George for any loss of pay he may have suffered by reason of the respondents' discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from September 26 to October 15, 1942, when charges filed on his behalf were withdrawn and from January 16, 1945 to the date of the respondents' offer of reinstatement, less his net earnings⁴ during these periods;

(g) Make whole Clarence Joseph Armant for any loss of pay he may have suffered by reason of the respondents' discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his dis-

⁴By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge of the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U. S. 7.

charge to October 15, 1942, when charges filed on his behalf were withdrawn, and from January 16, 1945, to the date of the respondents' offer of reinstatement, less his net earnings during these periods;

(h) Make whole Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Monnette Nye, Ada Lish, Eloise Hunt, and Clarence William Youngberg, Jr., for any loss of pay which they may have suffered by reason of the respondents' discrimination against them, by payment to each of them of a sum of money equal to the amount which each normally would have earned as wages from the date on which charges were filed on their behalf to the date of the respondents' offer of reinstatement, less the net earnings of each during such period;

(i) Make whole Florence Maynard for any loss of pay she may have suffered or may suffer by reason of the respondents' discrimination against her, by payment to her of a sum of money determined in the manner set forth in the proposed findings attached hereto, in the section entitled "The remedy";

(j) Make whole Herbert H. Caffarel for any loss of pay he may have suffered by reason of the respondents' discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from July 29, 1944, the date of his discriminatory discharge, to the date of the respondents' offer of

reinstatement, less his net earnings during this period;

(k) Post at their plants in Los Angeles, California, copies of notice attached to the Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order, marked "Appendix A."⁵ Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the respondents' representatives, be posted by the respondents immediately upon receipt thereof, and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by any other material;

(1) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order, what steps the respondents have taken to comply herewith.

It Is Further Ordered that the complaint against Cannon Manufacturing Corporation and James H. Cannon, an individual, doing business as Cannon Electric Development Company, be, and it hereby is, dismissed, insofar as it alleges that the respond-

⁵In the event this order is enforced by decree of a Circuit Court of Appeals, there shall be inserted, before the words "A Decision and Order," the words: "A Decree of the United States Circuit Court of Appeals Enforcing."

ents discriminated in regard to the hire and tenure of employment of Gus Palm, Louis Tournie, and Louis LaGuerre Drouet.

Signed at Washington, D. C., this 16 day of December 1946.

PAUL M. HERZOG,
Chairman,

JOHN M. HOUSTON,
Member,

(Seal) National Labor Relations Board

United States of America
Before the National Labor Relations Board

Case No. 21-C-2428

In the Matter of CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual, doing business as
CANNON ELECTRIC DEVELOPMENT COMPANY¹ and IN-
TERNATIONAL ASSOCIATION OF MACHINISTS, LODGE
311.

Case No. 21-C-2474

In the Matter of CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual doing business as CAN-
NON ELECTRIC DEVELOPMENT COMPANY, and UNITED
ELECTRICAL, RADIO & MACHINE WORKERS OF AMER-
ICA, CIO.

Mr. Charles M. Ryan, for the Board. Mr. David
H. Cannon, of Los Angeles, Calif., for the respond-
ent. Miss Judy Dunks, of Los Angeles, Calif., for
the UE. Mr. Maurice M. Miller, of counsel to the
Board.

PROPOSED FINDINGS OF FACT,
PROPOSED CONCLUSIONS OF LAW and
PROPOSED ORDER

Statement of the Case

Upon amended charges duly filed by Interna-
tional Association of Machinists, Lodge 311, herein
called the IAM, and United Electrical, Radio &
Machine Workers of America, affiliated with the
Congress of Industrial Organizations, herein desig-

¹ The parties agreed that Cannon Electric Development Com-
pany was the correct name for the business operations of this re-
spondent, and the pleadings and other formal papers were amended
accordingly.

nated as UE, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its consolidated complaint,² dated February 15, 1945, and an amendment thereto, dated May 7, 1945, against Cannon Manufacturing Corporation, herein called the Corporation, and James H. Cannon, an individual, doing business as Cannon Electric Development Company, herein designated as the Company, both herein designated jointly at times as the respondents, alleging that the respondents had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the consolidated complaint, the amendment thereto, the amended charges, and the notice of hearing, were duly served upon the Corporation, the Company, the IAM, UE, and the Cannon Employees Association, herein designated as CEA.

With respect to the alleged unfair labor practices, the amended complaint, as further amended at the hearing, stated, in substance, that the respondents: (1) on or about May 20, 1941, had inaugurated, sponsored, promoted and formed a labor organization among their employees known as the Contact Committee; (2) beginning on or about

²The Board, on February 14, 1945, pursuant to Article II, Section 36 (b) of its Rules and Regulations as amended, had ordered the consolidation of the cases involved herein.

May 20, 1941, and continuing to on or about September 15, 1941, had dominated and interfered with the formation and administration of the Contact Committee, contributed financial and other support thereto, and coerced, encouraged, influenced and persuaded their employees to accept the Contact Committee as a collective bargaining representative; (3) on or about January 1, 1941, had inaugurated, sponsored, promoted and formed a labor organization among the employees known as the Cannon Employees Association, originally known as the Cannon Employees Recreation Association, herein called CERA; (4) continuously since January 1, 1941, has dominated and interfered with the formation and administration of CEA, contributed financial and other support thereto, and coerced, encouraged, influenced and persuaded their employees to accept CEA as a collective bargaining representative; (5) entered into and presently have an agreement with CEA, under which they have required and now require as a condition of employment that their employees join and remain members of CEA and pay dues and assessments to it; (6) by entering into such an agreement with CEA, which agreement is invalid, and particularly by the requirement that the employees join and remain members of that organization and pay dues and assessments to it, have interfered with, restrained and coerced their employees and continue to interfere with, restrain and coerce them in the exercise of rights guaranteed by the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (1)

and (2) of the Act—for which conduct the respondents should be required to reimburse and make whole their employees, including present employees and former employees, by payment to them of a sum of money equal to the amount of money which the employees have paid in dues and assessments to CEA; (7) on various dates between December 5, 1941 and July 29, 1944, discharged and refused to reinstate six named employees³ for the reason that they joined and assisted UE or in the IAM, respectively, opposed CEA, and engaged in concerted activities with other employees for their mutual aid and protection; (8) on or about June 12, 1943, discharged and refused to reinstate eight named employees⁴ for the reason that they joined and assisted UE and refused to maintain membership in CEA or pay dues and assessments to it; (9) discouraged membership of their employees in the IAM and UE by making scurrilous, defamatory and derogatory attacks upon the said labor organizations and their representatives, by threatening their employees with retaliation and reprisal if they joined or assisted such labor organizations, and by engaging in surveillance of union meetings and activities; and (10) by all the foregoing acts interfered with, restrained,

³Gus Palm, Alvin L. George, Clarence Joseph Armant, Florence Maynard, Herbert H. Caffarel, and Louis La Guerre Drouet.

⁴Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Monnette Nye, Louis Tournie, Ada Lish, Eloise Hunt and Clarence William Youngberg, Jr.

and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondents' answer, as amended at the hearing, admitted the jurisdictional allegations of the complaint as to the Company but denied such allegations as to the Corporation. The answer of the respondents also admitted that the IAM, UE, and CEA are labor organizations within the meaning of the Act, but denied that the Cannon Employees Recreational Association and the Contact Committee were ever labor organizations within the meaning of the Act. In their answer the respondents further admitted the discharges alleged, but denied the commission of the unfair labor practices set forth in the amended complaint, and as an affirmative defense alleged that the Board is estopped from proceeding on the issues herein for the reason that these issues had been fully determined and settled by the action of the Board in a previous representation proceeding.

Pursuant to notice a hearing was held on various dates between May 24 and June 7, 1945, at Los Angeles, California, before James C. Batten, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondents were represented by counsel, and the UE by its representative. All participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties.

At the opening of the hearing, counsel for the Board served upon the parties a "Second Amend-

ment to the Complaint.” Counsel for the respondents, by agreement of the parties, was thereupon granted additional time to file an amended answer. The respondents also moved for a continuance, upon the ground that the second amendment to the complaint entirely changed the issues. The motion was denied.⁵ Counsel for the respondents also objected to any hearing on the complaint, upon the ground that the issues framed therein had been passed upon with a degree of finality by the National Labor Relations Board, as set forth in the affirmative defense in the respondents’ answer. The Trial Examiner overruled the objection. Counsel for the respondents then requested the exclusion of all witnesses, except a representative of the respondents and representatives of the complaining labor organizations. The motion was granted, but respondents’ counsel withdrew it when the Trial Examiner refused to permit more than one representative of the respondents to remain at the hearing, under a uniform application of the rule. Counsel for the respondents renewed the motion for the exclusion of witnesses later in the hearing, at which time the Trial Examiner stated that he had no objection to the exclusion of witnesses if the rule were uniformly applied. Counsel for the respondents and the Board gave no indication that they were willing

⁵ The second amendment to the complaint did not change the issues as set forth in the original complaint, but did strike from the amended complaint certain allegations of which the respondents had had proper notice.

to have the rule invoked upon such a basis. At the close of the testimony, Board's counsel moved to conform the pleadings to the proof with respect to names, dates, and other formal matters. There was no objection, but the Trial Examiner failed to make a formal ruling on the motion. The motion is hereby granted. Counsel for the respondents then moved to dismiss the entire consolidated proceeding, upon the ground that all the issues involved had theretofore been heard and determined by the Board, and were well known to UE, the IAM, and the Board at the time of two earlier elections, the consent election of September 9, 1941 and the Board-ordered election of January 25, 1943. The motion was denied. At the conclusion of the hearing the parties informally discussed the issues. Briefs were filed by the Board and the respondents.

During the course of the hearing the Trial Examiner made rulings on other motions and objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The Trial Examiner's rulings at the hearing are hereby affirmed.

On September 14, 1945, the Board, acting pursuant to Article II, Section 36 (a) of the National Labor Relations Board Rules and Regulations, Series 3, as amended, issued an order providing that the case be transferred and continued before the Board for the issuance of Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order.

Upon the entire record in the case, the Board makes the following:

PROPOSED FINDINGS OF FACT

I. The Business of the Respondents⁶

Cannon Manufacturing Corporation, a California corporation, has its principal office and place of business at Los Angeles, California, where it is engaged in the manufacture of cable connections and electrical specialties. During the calendar year ending December 31, 1934, the Corporation purchased materials in excess of \$3,000,000, for use in its manufacturing plant, of which materials worth approximately \$500,000 were obtained from sources outside the State of California. During the same period, the entire manufacturing output of the Corporation, valued in excess of \$7,000,000, was sold to the Cannon Electric Development Company.

James H. Cannon, individual, doing business as Cannon Electric Development Company, operates as a contracting agency. The Company designs and engineers the products of the Corporation, conducts all necessary advertising, and handles all sales. In 1944 its sales exceeded \$7,000,000 in value. Approximately 15 percent of the sales were made directly to the United States Government, while 70 percent were made to aircraft companies having Government contracts, a substantial percentage being shipped to points outside the State of California.

⁶ The findings made herein with respect to the business of the respondents are based upon admissions in the amended answer and a stipulation of the parties.

We find that the respondents are engaged in commerce within the meaning of the Act.⁷

While the respondents appear to maintain separate legal and accounting identities, they are in fact operated as a single integrated enterprise, occupying the same office and plant.⁸ The Corporation is wholly owned by James H. Cannon, but the managerial control and the operations of both enter-

⁷ Counsel for the respondents admits that the Company is engaged in commerce within the meaning of the Act, but makes no such admission with respect to the Corporation. In connection with a prior representation proceedings, however, discussed more fully hereinafter, the respondents stipulated that the Corporation and the Company were "engaged in interstate commerce" within the meaning of the Act. Cannon Manufacturing Corporation, et al., 46 N. L. R. B. 592.

⁸ The business was created in 1915 by James H. Cannon, operating under the name of the Cannon Electric Development Company. In 1920 the business was incorporated, but continued to operate under the same name until 1939, when it became Cannon Manufacturing Corporation. At the same time James H. Cannon registered the Cannon Electric Development Company as the trade name of a sole proprietorship, which became the engineering and sales agency of the Corporation. Both organizations jointly occupied what is now known as Plant No. 1 until late in 1940, when the offices and most of the operations were moved to a new building, known as Plant No. 2. Unless otherwise specified, the individuals involved in the present proceeding were officers, supervisors, or employees of the Corporation, which employed approximately 1,300 of the 1,500 persons on the pay roll of the respondents.

prises are closely coordinated. James H. Cannon, in his capacity as president of the Corporation and sole owner of the Company, actively conducts the operations of each, and directs the labor relations policy of both respondents. Since the evidence establishes that the respondents operate as a unit and maintain a common policy in labor relations matters, it is clear, and we find, that for the purposes of the instant case, the respondents constitute a single employer under Section 2 (2) of the Act.

II. The Organizations Involved

United Electrical, Radio & Machine Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the respondents.

International Association of Machinists, Lodge 311, unaffiliated, is a labor organization admitting to membership employees of the respondents.

Cannon Employees Association, originally known as the Cannon Employees Recreation Association, is an unaffiliated labor organization admitting to membership employees of the respondents.

The Contact Committee was an unaffiliated labor organization which represented the employees of the respondents.

III. The Unfair Labor Practices

A. Early labor relations history; accompanying interference, restraint, and coercion.

The employees of the Company⁹ first evidenced

⁹ See footnote 8, *supra*.

interest in a labor organization in 1937, at which time the International Brotherhood of Electrical Workers executed a written agreement with the firm. In the spring of 1938, the IAM requested recognition. The resulting correspondence between that organization and the Company included several letters in which James H. Cannon vilified the Union threatened to discharge union supporters in his employ, and indicated that he would welcome an "inside" organization of his employees "to discuss problems of mutual interest" with management. He declared, *inter alia*, that the Union was "promoting" the idea that employees could "blackmail" higher wages out of an employer, characterized the Wagner Act as "one of the most flagrant miscarriages of justice" in the statute books, and promised that "any undue activity" by the employees would result in "tragedy." In a letter dated May 11, 1938, Cannon declared that he possessed "sufficient 'intestinal fortitude' to tell any outside organization that tries to 'horn in' and disorganize the workes, to go to hell," and invited dissatisfied employees to resign, as he saw no reason for "wasting further time in discussing the formation of a clique that could dominate the operation of (the) business over the will of the management."¹⁰ During the

¹⁰ While we believe it to be likely that these letters were seen by employees of the Company, there is no testimony to indicate that this occurred. We make no finding, therefore, that these statements constitute interference, restraint, or coercion. They serve, nevertheless, to indicate the general attitude of the re-

same period, according to the undenied and credited testimony of Alvin George, a witness for the Board, Plant Superintendent Roy Cromwell suggested that he attend an IAM meeting, and questioned him thereafter about the number present, the identity of those of who conducted the meeting, and the nature of the discussion.

On June 21, 1938 the IAM reached an agreement with the Company, effective from year to year thereafter, subject to modification or termination at the end of any yearly period. This contract has never been formally terminated, but the available evidence indicates, and we find, that the grievance committee established by its terms did not function in 1939 and 1940. There is no further evidence of IAM organizational activity among the respondents' employees before the filing of the charges which initiated the present consolidated proceeding.

B. Company domination and support of employee organizations; accompanying interference, restraint, and coercion.

1. The Contact Committee

In December, 1940, shortly after the respondents had transferred the major part of their operations to Plant No. 2, as already noted, UE began an organizational campaign among the respondents' employees. James H. Cannon testified that this ac-

spondents to so-called "outside" organizations, and we have considered them in evaluating other conduct ascribed to the respondents and discussed more fully hereinafter.

tivity on behalf of UE coincided with a fourfold expansion of the Corporation pay roll—a development which created a number of “personnel problems,” and which led Cannon to the conclusion that some method for dealing with grievances and the adjustment of working conditions was essential. Accordingly, on May 20, 1941, he issued an open letter to the employees, in which he suggested the formation of an employees’ “Contact Committee” for this purpose. The letter indicated the manner in which the Committee would function, the type of men who should be nominated to it, and set forth in some detail the election procedure to be used. Cannon promised that Committee members would receive additional pay and clerical help. He concluded with a general discussion of his plans for employee welfare, expressed the belief that the proposed system would bring substantial benefits to the employees, and appealed for their cooperation.¹¹

The letter of May 20 was distributed at the plant gates by the staff of the “Cannoneer,” a monthly publication of the respondents. Shortly thereafter, Mary Torrence, assistant editor of the “Cannoneer,” conducted two elections in the plant, to enable the employees to select the membership of the Committee. The employees cast their ballots on company time. One week later, Torrence announced

¹¹ On May 26, 1941, when UE requested the respondents to recognize a grievance committee on behalf of UE members, the request was refused by the respondents.

the results, and also announced that the Committee would hold its first meeting in the plant conference room.

The newly elected group met as scheduled, with James H. Cannon and his son Rober Cannon, vice president and general manager of the Corporation, in attendance. The Cannons suggested that its organization be completed, and officers were then elected. Herbert Caffarel was named chairman of the group. His letter of thanks, which accompanied a statement of committee procedure signed by James H. Cannon, was revised by the editor of the "Cannoneer" and distributed at the plant gates by the staff of that publication. Thereafter, the Committee met frequently on the swing shift in the plant conference room and discussed employee grievances in the presence of James H. Cannon or his son.¹² On several occasions, in open letters to the employees, Cannon praised the Committee and urged the employees to support it. The Committee fell into a state of desuetude, however, and eventually ceased to function after having been in existence for approximately 3 months.¹³

It is clear from the above recital, and we find,

¹² Caffarel testified that the Committee considered one grievance involving a discharge who sought reinstatement, and also brought to the attention of management a case in which several employees complained about the conduct of their foreman.

¹³ The Committee has never been disestablished. James H. Cannon admitted further that the respondents' employees have never been informed officially that the Committee has ceased to exist.

that the Contact Committee was a labor organization within the meaning of Section 2 (5) of the Act, and that it was a creation of the respondents in its entirety. The Committee was formed and existed for purpose of dealing and did deal with the respondents concerning grievances and conditions of work. It came into being through the direct solicitation of the respondents, and was dominated by the Cannons, father and son, throughout its entire period of activity. The contention of the respondents that Committee members were chosen in a free and secret ballot, and functioned without interference, is not supported by the record. We find that the Contact Committee was intended, and did operate, as a bar to the freedom of self-organization guaranteed by the Act. By their conduct, as set forth above, the respondents have dominated and interfered with the formation and administration of the Contact Committee, and contributed support to it, within the meaning of Section 8 (2) of the Act, thereby interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. The Cannon Employees Recreation Association and the Cannon Employees Association.

On the day after a UE sound truck first appeared before the respondents' plant, in January 1941, Ned Mandella, a tool crib attendant, placed a petition on the tool crib counter and asked employees to sign it "to keep out the CIO." The document was later designated as a list of membership

applications for the Cannon Employees Recreation Association. One of the employees solicited by Mandella was Alvin L. George, a carpenter. The latter refused to sign, advising Mandella that he did not believe such a petition could properly be circulated on company time. Withing the week, George was called into the office of Plant Superintendent Ray Cromwell, who asked why he did not join the organization which Mandella was forming. When George stated that he did not wish to get in trouble with the respondents, Cromwell replied that it was all right, and that the respondents knew what Mandella was doing. He stated that the organization would be a "company union," and asked George to join. However, despite further solicitation by Mandella, George refused to become a member of the new organization, and eventually joined UE, as hereinafter noted.

Other witnesses stated that the petition which Mandella asked them to sign identified the organization being formed as a "club" designed to sponsor recreational and athletic activities. Shortly after the initial circulation of the petition, a bulletin board for CERA announcements was erected near the office of Superintendent Cromwell. Bulletins announcing a forthcoming election of officers for CERA were posted thereon. Lawrence Wiley, an employee, testified credibly that these bulletins, which included a suggested slate of officers, remained posted for a week, and that the election was held shortly thereafter. A ballot box was placed near Cromwell's office, ballots were distributed in

the various departments, and employees were permitted to vote during working hours. Wiley and two other employees counted the ballots in the plant. Ned Mandella was elected president of the organization.

The officers and board of directors selected in this fashion held several meetings between January and April 1941.¹⁴ During this period various representatives of the organization continued to solicit members among the employees, and distributed membership cards in the name of CERA.¹⁵ The record, however, contains no indication that CERA ever functioned in the fashion indicated by its name.

In the meantime, on February 28, 1941, Articles

¹⁴ Joseph Lewis, an attorney who subsequently represented the Cannon Employees Association, was present at two of these meetings.

¹⁵ The first membership cards distributed bore the trade mark of the respondents, but this distinguishing feature was omitted when the cards were subsequently reprinted. Both James H. Cannon and Robert Cannon, testified that this use of the respondents' trade mark was entirely unauthorized, that they had been unaware of its use on CERA cards until the matter was called to their attention, and that Mandella was immediately ordered to discontinue the use of cards bearing the firm trade mark. The trade mark is prominently displayed throughout the plant and can be reproduced without the use of a special cut. Its use by CERA, therefore, cannot be considered indicative of support by the respondents, in the absence of direct evidence that its use in the manner indicated was authorized or permitted by them.

of Incorporation and By-Laws for an organization known as the Cannon Employees Association were filed with the State authorities. The CEA, organized as a non-profit corporation, was authorized to engage in a wide range of welfare activities and to act as a labor organization. According to the credited testimony of Wiley, a director of CERA and one of the incorporators of CEA, the directors of the Cannon Employees Recreation Association voted in April 1941 to change the name of the organization to Cannon Employees Association and to continue operations under the charter and bylaws previously noted.¹⁶ Although Wiley and one of the other directors resigned almost immediately thereafter, Ned Mandella retained his position as president of the new organization without any further election. He appointed two directors to replace those who had resigned, and the board of directors of CERA contained to act as the governing body of the new organization.

On or about May 20, 1941, Elsie Monjar, an employee, had a conversation with Mandella in the plant, in which the latter stated that CERA, CEA, and the Cannon Employees Welfare Association,¹⁷ "are all mine." He told Monjar that CERA and CEA "are the same thing," and that "the boss" had asked him to organize CEA. In response to a

¹⁶ Wiley testified that Mandella said the action was being taken "to keep out the CIO" by setting up CEA as a labor organization.

¹⁷ A welfare organization whose activities are not otherwise relevant in this proceeding.

question by Monjar, Mandella stated that it was not a company union but an "employees union," designed to keep out the CIO. He invited Monjar to solicit members for CEA on her shift, and advised her to "organize" during working hours. Monjar did solicit members for CEA thereafter. She turned in lists of new members and the initiation fees she collected to secretary of CEA during the working hours of the latter, at which time the secretary gave her membership cards for distribution to new members. CERA membership cards were used to record the dues payments of CEA members as late as July 1941, although the former organization supposedly had ceased to exist in April.¹⁸ According to Monjar's uncontradicted testimony, which we credit, the foreman of the department in which the secretary worked observed her conversations with Mandella and the secretary on each of the occasions on which they conferred, but never interfered.

On several occasions during this period, James H. Cannon distributed open letters to the employees,

¹⁸ Counsel for the respondents contended there was no connection between CERA and CEA. It is clear from the above that this contention is without merit. When called as a witness for the respondents, James H. Cannon admitted the connection between the two organizations. His testimony on direct examination reads as follows:

A. The C.E.A. started to organize, I guess, under that old name of the Association.

Q. The Cannon Employees Recreation Association?

A. Yes, Sir. . . .

and copies of correspondence with UE which clearly indicated his hostility to that organization. These letters included statements that the respondents would never operate a closed shop, that "outside" organizations would never dictate to the companies, and that UE had misrepresented the position of the respondents with respect to its organizational activities. On July 3, 1941, in a letter to UE which was also distributed to the employees, Cannon challenged the UE to prove an alleged statement that he was dishonest, or to withdraw from the plant.

Herbert Caffarel was another employee approached by Mandella, who requested that he assist in the organization of CEA. Caffarel was given a badge which identified him as a "Member of the Board of Directors" and solicited members for CEA on the plant premises during working hours, primarily in his own department.

On June 9, 1941, CEA filed with the Board a petition for an investigation and certification of representatives. During the months that followed, both UE and CEA appear to have engaged in extensive organizational activity within the plant of the respondents. Adherents of both organizations solicited membership during working hours. On August 15, 1941, the respondents issued a pamphlet, "Employee Information and Regulations," which provided inter alia that employees were not to solicit membership in any organization "during

working hours or on company property.”¹⁹ The record established however, that Caffarel, Mandella and other employees continued to solicit members for CEA on the respondents’ premises thereafter, and there is no specific evidence of disciplinary action by the respondents against supporters of the aforesaid organization.²⁰

We find no indication in the record that representatives of management knowingly permitted UE

¹⁹ The rule, as quoted, is obviously too broad. See *Peyton Packing Company*, 49 N.L.R.B. 828; enforced 142 F. (2d) 1009 (C. C. A. 5). It was rescinded, however, in March, 1942, and has not been enforced since that date.

We note, in this connection, that the by-laws of CEA, adopted earlier in 1941, listed 17 “Grounds for Discharge of Members.” The regulations described above listed 13 types of activity which they would consider “Causes for Discharge.” Eleven of the causes for discharge cited by the respondents are identical with types of activity previously listed by CEA as grounds for discharge. The by-laws of CEA were amended subsequently, and the title of the section to which reference is made was changed to read “Grounds for Expulsion of Members.”

²⁰ Some of the volunteer organizers on behalf of CEA were leadmen at the time. Although the record supports an inference that the respondents’ leadmen had sufficient authority to be classified as supervisors, it is clear that they were considered by all parties to be within the unit appropriate for collective bargaining at the plant of the respondents. Leadmen were permitted to vote in the 1941 consent election noted hereinafter and there is no indication of their exclusion from the unit in the later election directed by the Board.

supporters to engage in similar activities on company time. The evidence is to the contrary and the freedom accorded to Mandella, Caffarel and others, to solicit on behalf of CEA during working hours, stands in marked contrast to the treatment of volunteer organizers for UE.²¹ Lawrence Wiley, who had joined UE and became a steward shortly after his resignation from CERA, was approached at his machine on or about August 28, 1941, by two employees who inquired about joining the CIO. Despite Wiley's refusal to discuss the matter during working hours, they returned several times and he finally gave them membership cards. Within a few minutes Howard Jorgensen, Superintendent Cromwell's secretary, called Wiley into the office of the latter, and Cromwell discharged him forthwith for soliciting in behalf of the Union on company time.

Thereafter, on September 2, UE called a strike of the respondents' employees, to protest the discharge of Wiley and several other UE stewards who had been dismissed at the same time. Local representatives of the armed services and the Office of Production Management arranged a conference of the interested parties forthwith. As a result of the conference which was held at the Regional Office

²¹ Robert Cannon testified that foremen had been instructed to remain neutral and to enforce the respondents' rules in all case, regardless of the union involved. He stated generally that workers had been disciplined for organizing on company time, but made no specific denial of the testimony summarized herein.

of the Board and attended by representatives of UE, CEA, and the respondents, UE agreed to terminate the strike, the respondents agreed to reinstate the discharged stewards subject to arbitration, and the parties agreed to a consent election on the petition then before the Board.

During the week preceding the election, whenever the UE sound truck appeared before the plant, loud speakers on the plant roof under the control of the respondents, were used to broadcast music with great volume, an action which effectively interfered with the efforts of UE to solicit support among the employees. In contrast, the undisputed evidence shows that a few days before the election some CEA literature was placed on the Corporation's time clock and was permitted to remain there for the perusal of employees, although a plant guard was permanently stationed nearby, at a post which commanded a clear view of the clock. On September 8, according to undisputed testimony, one of the respondents' foremen, Glenn McClung, appeared at work wearing a CEA button.²²

The election was held on September 9, 1941, and CEA received a majority of the valid votes cast. Objections to the election filed by UE were overruled by the Regional Director on October 17.

Shortly thereafter, on a date which does not appear in the record, James H. Cannon issued a letter to the employees in which he praised CEA,

²² On the day of the election, after the results were announced, the same foreman said, "Well, we won the election."

urged the employees to support it, and spoke of the fact that "the declaration of war" on CEA had upset it "as much as it did the management." Within a week of the election Foreman Glen McClung advised Clarence Armant to discard his UE steward's badge and join CEA.

On or about October 14, 1941, Louis LaGuerre Drouet, who was then a director of CEA, Andrew Bereznak, its vice-president, and Mandella went to a local branch of the Citizens National Bank during working hours, where they secured a loan of \$500 on an unsecured note for the use of CEA.²³

²³ Although Drouet was the principal witness in this connection, our findings on this point are not based on his testimony, but on the testimony of H. V. Vogelsang, branch manager of the bank, and Robert Cannon. Drouet's testimony, considered in its totality, and in the light of his prior inconsistent statements under oath, does not impress us as credible. None of the findings made herein are based upon testimony supplied by Drouet.

In testifying as to the bank loan now under discussion, H. V. Vogelsang, branch manager of the bank, stated that he had approved an unsecured loan to these employees without any investigation of their financial resources or credit standing, other than a telephone call to verify their status as employees of the Corporation. While admitting on direct examination that he knew James H. Cannon, and that the latter had had an account with the bank in 1941, Vogelsang denied that Cannon was now a director of the bank, and testified that he did not believe Cannon had occupied that position in 1941. Robert Cannon testified that he had received a telephone call from Vogelsang when the application for the loan was made, but stated that he had merely

Thereafter, on October 24, 1941, following a short period of negotiation, the respondents and CEA executed an agreement effective for a term of 1 year and indefinitely thereafter, subject to termination on 30 days' notice. The agreement provided for a union shop, union membership being compulsory for employees who completed a 90 day probationary period.²⁴ In return, CEA agreed to accept as members all persons employed by the respondents within the bargaining unit on the date when the contract was signed who made written application for membership within 10 days of that date, "as long as it does not conflict with the bylaws of the Associa-

advised Vogelsang as to the employment status of the applicants. He denied that he had sent the men to the bank, denied any advance knowledge of their intention to seek a loan, and denied that he had guaranteed the loan in any way.

While the testimony of Vogelsang indicated that the loan was made without adequate investigation, there is no direct evidence that his willingness to advance the money in this fashion was due to assurances by the respondents. Although there appears to be ground for suspicion that the action of the bank was motivated by such assurance, the evidence fails to establish that such was the case, and accordingly we make no finding to that effect herein.

²⁴ In this connection, we note that the 1937 contract with the IBEW, and the 1938 agreement with the IAM, had not provided for any form of union security. James H. Cannon testified he had announced at the time that he would never sign a closed-shop contract with an affiliated union. There is no evidence that the respondents opposed the inclusion of a union security clause in their contract with CEA.

tion.²⁵ The agreement also provided for a voluntary check-off of dues, but the record established that employees were never clearly notified that check-off authorizations were voluntary. They were asked to authorize the dues check-off at the same time they were told that execution of a membership application was a prerequisite to continued employment with the respondents.

In November 1941, Frank Hobart, employee relations director and editor-in-chief of the "Cannoneer," notified Elsie Monjar, a member of the editorial staff, that she would have to choose between the "Cannoneer" and the "UE-Cannon News" to which she was also contributing. Hobart informed Monjar that, in his opinion, her continued activity as a writer for both publications involved a conflict of interest. Monjar denied that any conflict of interest existed in fact, but announced her resignation from the staff of the "Cannoneer" as the result of Hobart's request. The record shows that four of the employees associated with the "Cannoneer" at the time of Monjar's resignation were active members of CEA, and that six persons subsequently associated with the house organ con-

²⁵ On November 5, 1941, CEA requested the dismissal of 122 named employees who had not signed applications for membership within 10 days after the execution of the agreement. On December 3, the organization requested the discharge of 13 named employees (including 6 of the persons named in the complaint), on the ground that its board of directors had voted to reject their applications for membership. There is no record of the ultimate disposition made of this request.

tributed simultaneously to the "CEA News," a publication of the contracting union.²⁶ Hobart testified at the hearing that he had not knowingly permitted reporters on the staff of the "CEA News" to write for the "Cannoneer." However, the editorial staff of the "CEA News" was listed in that publication; and it would seem incredible that Hobart was unaware of the fact that six of his reporters were also on the staff of the "CEA News." Upon all the evidence, we find that Hobart was fully cognizant of the related activities of his staff at all times, and that his action with respect to Monjar was discriminatory.

Several months after the 1941 consent election, CEA held its first election of officers.²⁷ This election was held in the plant cafeteria, a separate building on the respondents' premises administered by the Cannon Recreation Association.²⁸ The polls

²⁶ The record also shows that Monjar was the only employee who ever wrote simultaneously for UE and the aforesaid publication of the respondents.

²⁷ Some time prior to this event, on a date which does not appear in the record, Mandella approached Caffarel, chairman of the Contact Committee, and suggested that the Committee be disbanded. The Committee did vote to disband, and Mandella, who was present at the meeting, stated that he would like to take the entire Committee into CEA because of their familiarity with the adjustment of grievances.

²⁸ This organization is a non-profit corporation which sponsors recreational activities for the employees with funds derived from the operation of the cafeteria. It is officered and operated entirely by agents of the two respondents.

were open all day. Ballots were counted in the Corporation conference room after the polls closed. A subsequent run-off election was conducted in similar fashion.

b. Organizational activity in 1942; the Board-ordered election.

Sometime in February 1942, Alvin L. George, a known adherent of UE and one of the stewards whose discharge had precipitated the walk-out of September 2, was formally charged with a violation of CEA bylaws, as the result of an incident discussed more fully below.²⁹ Although he received no formal hearing on the charge, and although the record fails to reveal any effort by CEA to expell him from membership, he was dismissed on March 4, 1942.

During 1942, the respondents and CEA conducted an irregular correspondence on such matters as the dismissal of dues delinquents, and alleged discrimination against CEA stewards by foremen. The record is silent as to other aspects of the relationship between the respondents and CEA.

UE, however, had resumed its organizational activities among the employees of the respondents in the spring of 1942. At the outset of its campaign, Harry Bridges, Regional Director for the CIO, wrote several letters to James H. Cannon with respect to the objectives of UE. Copies of these let-

²⁹ George had become a member of CEA sometime before this incident, in conformity with the requirements of the existing agreement.

ters were distributed to the employees by the Union. The letters written by Cannon in response generally vilified Bridges, the UE, and the type of trade unionism which they were alleged to represent. Although there is no evidence that copies of these letters were distributed to the employees, an open letter distributed to them on May 29, 1942, contained similar statements. In a letter to the employees dated June 19, 1942, James H. Cannon stated that a new agreement would soon be negotiated, and that a "representative setup" in CEA was "well under way, although somewhat behind delivery." Other open letters distributed in November 1942, after the filing of the UE petition, described the union circulars as defamatory, criticized unions generally and the UE in particular for its previous organizational activity, and warned the employees that labor would have to face the "vengeful wrath" of returning veterans.

In the meantime, during June of that year, Clarence Joseph Armant, a UE supporter who maintained membership in CEA under the terms of the existing contract, was charged with several violations of the CEA bylaws. The charges were "investigated" by the CEA board of directors.³⁰ Armant's subsequent discharge at the request of CEA was referred to the U. S. Conciliation Service, and the respondents agreed to reinstate him with

³⁰ Louis LaGuerre Drouet, janitor foreman of the respondent Corporation, was an active member of the CEA board at the time, and participated in the investigation.

back pay on September 12, 1942. Within one-half hour of his return a group of CEA supporters met in the plant cafeteria to protest his reinstatement. The resulting dispute was "arbitrated," on September 15, at which time James H. Cannon reviewed the charges against Armant. Several days later Armant was notified that Cannon had concurred in the request of CEA, and that he should consider himself discharged.

On September 21, 1942, UE filed a petition for certification as the representative of the respondents' employees.³¹ A Decision and Direction of Election was issued on December 31, 1942. The election was held on January 25, 1943, and CEA again received a majority of the valid votes cast. On January 30, 1943, UE filed objections alleging, in substance, that the respondents had illegally assisted CEA prior to the election. At the same time UE filed formal charges, alleging generally that the companies had violated Sections 8 (1) and (2) of the Act. On March 18, 1943, the Regional Di-

³¹ Thereafter, on September 26, UE filed charges alleging that CEA was company-dominated, and that the discharges of George and Armant had been effected with discriminatory intent. These charges were withdrawn without prejudice on October 15, 1942, apparently to enable the Board to proceed with the representation case.

On November 25, 1942, CEA filed charges alleging that the Corporation was assisting UE in its organizational campaign. These charges were fully investigated, and the Regional Director refused to issue a complaint. His action was sustained by the Board on December 26, 1942.

rector notified UE of his refusal to issue a complaint, and filed a Report on Objections which concluded that none of the objections raised substantial or material issues. In a Supplemental Decision and Certification of Representatives, issued April 12, 1943, the Board overruled the objections and certified CEA.

Thereafter, on May 5, 1943, the respondents and CEA executed a new agreement, to be effective for 1 year or the duration of the war "whichever is longer," and indefinitely thereafter subject to termination on 30 days' notice. The respondents again recognized "the principle of the closed shop," and agreed that all persons hired after the execution of the agreement would have to become and remain members of CEA, and authorize the check-off of their union dues, "as a condition of continuous employment." Check-off arrangements for persons employed prior to the execution of the agreement were to continue on a "voluntary" basis. It was also expressly agreed that CEA might use the cafeteria "for department and shift meetings."

c. The relationship between the respondents and CEA after the Board-ordered election.

In the spring of 1943, shortly after the Board-ordered election already noted, Caffarel, who was then president of CEA, saw James H. Cannon in the office of the latter. Cannon notified Caffarel that he did not approve of the retainer of Joseph Lewis as CEA attorney, since the fees for this service were being paid by the employees. At the next CEA board meeting, Business Agent Richard

Franklin ³² and John Gibson, a member of the board, sponsored a move to dismiss Lewis and the board approved the motion.

On May 26, 1943, the executive board of the UE local which had been organized at the respondent's plant distributed an open letter to the employees reaffirming their intention not to "join" CEA. The charges made by several members of CEA as a result of this action led to a formal hearing by that organization, which the UE supporters did not attend. On June 12, 1943, five of the eight employees who had signed the open letter were advised that they had been discharged at the request of CEA. Two other employees who had not been involved in the circulation of the open letter were discharged on the same date.³³

In the fall of the year, according to Rachel McBurnie, the shop stewards of CEA on her shift held a meeting in the plant cafeteria on company time, at which she was elected Chief Steward for that shift. She lost no pay for the time consumed by the meeting.³⁴ Thereafter, in May 1944, she was

³² The circumstances under which Franklin achieved this position, are set forth below.

³³ Louis Tournie, who was named in the complaint as the eighth person discharged on this date, appears to have resigned his employment voluntarily on June 18.

³⁴ Although there is no evidence that supervisory employees of the respondents were aware of the meeting in question, it is clear that meetings of the CEA executive board on company time and prop-

a successful candidate for the board of directors of CEA. Shortly before she was sworn in, John Gibson, then president of CEA, took her to see Robert Cannon. In the course of a general conversation about her new position, Gibson inquired if she had been elected to vote for the ouster of Richard Franklin as business agent. Despite her denial, Robert Cannon interposed the comment that the Corporation and CEA got on well together, and that Franklin had made a good business agent.

On the following day the newly elected board of directors held its first meeting. One of the new directors proposed a motion for the ouster of Franklin, which carried by a vote of four to three. Gibson refused to accept the vote, however, and called for a referendum by the membership. Although the election which followed was originally planned as a referendum on the ouster of Franklin, the ballots stated the issue as a choice between the retention of Franklin and Gibson, or McBurnie and the other directors who had voted for the ouster. Gibson and Franklin received a vote of confidence by the margin of 384 to 380 votes.

McBurnie testified credibly, and we find, that the election was held in the plant cafeteria from 7:00 a. m. to 8:30 p. m., the ballot box being guarded by an employee and one of the respondent's guards,

erty were permitted by the respondents. At least one such meeting was reported in the "CEA News." No witness for the respondent denied that employees were paid for time spent in such meetings. See footnote 35, *infra*.

who was wearing a business suit on that occasion. The votes were counted in the cafeteria, after which the guard and Cal Cannon, manager of the cafeteria, took the ballots into the cafeteria office.³⁵

The record establishes that the respondents at all times permitted employee representatives of CEA to attend to the affairs of that organization on company time, without loss of pay. Caffarel, who had several offices in CEA, testified credibly he had often left the plant on business for that organization,³⁶ and that meetings of the CEA board were

³⁵ The testimony of McBurnie and other witnesses with respect to CEA elections establishes that some of the employees who spent time away from work because of the elections suffered no deduction in pay. On the occasion discussed above, McBurnie's foreman gave her permission to attend the count, and she suffered no loss of pay as a result. Robert Cannon testified that the respondents permitted CEA to use the cafeteria for elections, and that these elections may have been held during working hours, but that it was not the intention of the respondents to pay employees for time spent away from work on election days. This testimony cannot be considered an express denial of the other evidence on this issue, and we find, in accordance with a preponderance of the evidence, that employees were paid for time spent away from work on these occasions.

³⁶ Caffarel was president of CEA from November, 1942, to March, 1943. Shortly after his election to this office he received a "permanent" pass from Superintendent Hawkinson, which permitted him to enter and leave the plant at will. During his subsequent term as treasurer, from March to December, 1943, he frequently transacted business at the bank

frequently held on company time. He stated that he was never aware of any deduction from his pay as a result of these absences from his work. John Gibson, who was elected president of the organization early in 1944, testified, and we find, that he had made arrangements through Superintendent Hawkinson whereby he, as president of CEA, could take time off from work without loss of pay, to transact CEA business. This arrangement, which permitted him to absent himself for not more than 2 hours in any 1 day, was made in the latter part of 1944. Gibson testified credibly that he handled CEA business during working hours 4 or 5 days per week; that he always secured the permission of his foreman to leave the plant, but never clocked out; and that this practice was followed by the other officers as well, until the organization was disbanded under circumstances hereinafter noted, in April 1945. Gibson contended that the practice described was sanctioned by Section X of the agreement of May 5, 1943. The section cited, however, merely allows members of the CEA board of directors and business agents to appear on company property or leave it during working hours whenever such action is required by the business of the Association. There appears to be no warrant in the section cited for paying employees at regular rates of pay for time spent away from work, and we find that these ar-

for CEA, without loss of pay. According to Caffarel, his foreman was always advised when he left work for this reason. Caffarel's testimony is credited.

rangements were made pursuant to agreements arrived at independently of the contractual provision cited.³⁷

Factional differences within CEA, related generally to those already mentioned, ultimately led to several additional discharges in 1944. After a formal hearing on July 15 and 22, 1944, Florence Maynard and Herbert Caffarel were expelled from CEA for "spreading false reports." On July 29, 1944, Maynard and Caffarel were informed that CEA had demanded their discharge. Shortly thereafter, on August 4, 1944, the original charges in this consolidated proceeding were filed by the IAM, acting on behalf of the two dischargees.³⁸ On January 16, 1945, UE filed charges alleging that the respondents had violated Sections 8 (1), (2), and (3) of the Act.

³⁷ Robert Cannon, admitting that officers of the CEA had frequently absented themselves from work under these circumstances, testified that absence from work without loss of pay was permitted by the contract only for grievance committee members working on grievances of which the respondents had been officially notified. No clause of the agreement was cited in support of this view. See *Metal Mouldings Corporation*, 39 N.L.R.B. 107, 117-118, enforced (C. C. A. 6), April 6, 1943, unreported.

³⁸ The charges were subsequently amended to allege that Louis LaGuerre Drouet had been discriminatorily discharged on April 15, 1944. The circumstances of Drouet's dismissal will be discussed hereinafter.

d. The Present Status of CEA

In identical letters dated March 16 and April 4, 1945, CEA notified the respondents that its members had voted, on March 13, to become members of the Mechanics Educational Society of America, Local 75, and that the latter organization had become the exclusive bargaining agent for the employees of the respondents. The letters stated that CEA had been dissolved by its board of directors, requested that the current dues check be made payable to M.E.S.A.,³⁹ and asked the respondents to meet the officers of Local 75 to negotiate a new agreement. The respondents met with the officers of M.E.S.A. as suggested, and executed a new agreement on April 10, 1945.⁴⁰ On April 23, however, Matt Smith, National Secretary of M.E.S.A., wired the Company that the contract was cancelled. The

³⁹ Robert Cannon testified without contradiction, and we find, that Don Schloeder, then secretary of CEA, had asked the respondents to check off dues for the month of March in the usual fashion and remit a check for the amount involved to M.E.S.A. The dues for the respondents' employees had already been checked off, but the respondents have withheld the sum involved, and Cannon stated that it would be refunded to the employees, if this had not been done already as of the date of the hearing. James H. Cannon, who confirmed this statement, added that he did not know whether the employees have been told about the refund.

⁴⁰ This contract was to be effective for a period of 1 year. It contained no 30-day termination clause, but provided that it might be renewed for 1 year by mutual consent.

telegram was read over the public address system and copies were posted on the bulletin boards in the plant. James H. Cannon testified that he had been advised CEA was no longer active but that he had received no official notice of its dissolution; and counsel for the respondents stated that the organization was taking steps to dissolve, but that the process had not been completed.⁴¹ The respondents have made no public statement about the present status of their contract with CEA, and Robert Cannon testified that the respondents are actually unable to determine whether they now have one contract, two contracts, or none.

CONCLUSION FINDINGS

1. The effect of the earlier Board proceedings

The respondents moved at the hearing to dismiss the consolidated complaint upon the ground that all the issues involved in this proceeding as to company domination, coercion of employees, and discharges "have heretofore been heard and determined by the Board," and upon the further and related ground that all the facts upon which the present proceeding is based were known to the Board and the charging unions at the time of the two elections already noted. In effect, the respondents contend that the action of this Board in the earlier proceedings, and the disposition made of objec-

⁴¹ Robert Cannon stated that the respondents had received a statement of dissolution from CEA, and a copy of the notice sent by that organization to the State Corporation Commissioner.

tions to the elections and incidental unfair labor practice charges filed, precludes the present consideration of events which preceded the most recent certification of CEA.

A contention of this nature, although couched in terms of estoppel and *res judicata*, is addressed essentially to the administrative discretion of the Board, for it is well settled that representation proceedings, whether or not they culminate in the certification of a bargaining representative, neither estop the Board from subsequently proceeding with respect to charges of unfair labor practices alleged to have occurred prior thereto, nor are *res judicata* of such charges.⁴² It is equally clear that the failure of the Regional Director to act affirmatively on the objections of UE in the two election cases or to issue a complaint upon the charges later filed, cannot serve to preclude the Board from a consideration of the respondents' antecedent conduct. Non-action

⁴² *Wallace Corporation v. N.L.R.B.* 323 U. S. 248, affirming 141 F. (2d) 87 (C. C. A. 4), enforcing 50 N.L.R.B. 138; see also *Warehousemen's Union, Local 117 v. N.L.R.B.* 121 F. (2d) 84, 92-94 (App. D. C.) cert. denied 314 U. S. 674; *Utah Copper Company v. N.L.R.B.* 129 F. (2d) 788, 791 (C. C. A. 10) cert. denied 322 U. S. 731; *N.L.R.B. v. Swift & Company*, 127 F. (2d) 30, 31 (C. C. A. 6); *N.L.R.B. v. Standard Oil Company* 142 F. (2d) 676 (C. C. A. 6), enforcing with modifications 47 N.L.R.B. 517, cert. denied 65 S. Ct. 427; *N.L.R.B. v. Stone* 125 F. (2d) 752, 756-757 (C. C. A. 7) cert. denied 317 U. S. 649. Cf. *N.L.R.B. v. Sun Shipbuilding and Dry Dock Co.* 135 F. (2d) 15, 18, 23 (C. C. A. 3).

by the Regional Director provides no indication of a ruling upon the merits.⁴³

In considering the respondent's plea to our discretion in the instant case, however, we are mindful of the fact that our earlier certification of CEA was accompanied by the administrative dismissal of unfair labor practice charges involving that organization. If, thereafter, the respondents had not engaged in further unfair labor practices, or had engaged merely in isolated acts of assistance, the combination of a certification and the administrative dismissal of charges might well have convinced us that sound administrative practice required us to disregard the antecedent conduct of the respondents, and to base our findings in the present case entirely upon the events which followed the certification.⁴⁴ The record establishes, however, that the respond-

⁴³ N.L.R.B. v. T. W. Phillips Gas and Oil Company, 141 F. (2d) 329 (C. C. A. 3); N.L.R.B. v. Baltimore Transit Co., 140 F. (2d) 51 (C. C. A. 4); Republic Steel Corporation, 62 N.L.R.B. 1008; Standard Oil Company, et al., 43 N.L.R.B. 12; Sussex Dye and Paint Works, 34 N.L.R.B. 625; Ingram Manufacturing Company, 5 N.L.R.B. 908.

⁴⁴ See Shenandoah-Dives Mining Company, N. L. R. B. 885; Godechaux Sugars, Inc., 12 N.L.R.B. 568; Hope Webbing Company, 14 N.L.R.B. 55; Wickwire Brothers, 16 N.L.R.B. 316; Stromberg Carlson Telephone Manufacturing Company, 18 N.L.R.B. 526; Corn Products Refining Company, 23 N.L.R.B. 824; Tulsa Boiler and Machinery Company, 23 N.L.R.B. 846; American Bakeries Company, 51 N.L.R.B. 937; Cf. Interlake Iron Corp., 33 N.L.R.B. 613.

ents, after the certification, continued to engage in unfair labor practices which constituted a continuation or resumption of the unfair labor practices that preceded the Board action relied upon by the respondents as a bar. It is clear, and we find, as discussed more fully below, that the respondents, following the Board certification in 1943, continued improperly to interfere with the administration of CEA and to contribute support thereto. We are particularly impressed, in this connection, with such indicia of support as the freedom permitted CEA in holding director's meetings and elections on company time and property, and the permission given employee officers of that organization to transact CEA business on company time without loss of pay. Such conduct on part of the respondents reveals a settled purpose to prevent CEA from becoming a truly independent representative of the employees, and to render it incapable of engaging in the free collective bargaining contemplated by the Act. We find that the unfair labor practices of the respondents subsequent to our 1943 certification are such as to require an examination of the respondents' entire course of conduct, and the entire history of their relationship with CEA, in order to effectuate the purposes of the Act, to determine an appropriate remedy, and thereby to protect employees from unfair labor practices.⁴⁵

⁴⁵ In cases involving settlements of unfair labor practice charges approved by Board agents, or consent election agreements intended to settle prior charges, this Board has consistently held that it will

We therefore find the motion of the respondents for dismissal of the consolidated proceeding to be without merit, and it is hereby denied.

disregard such agreements and consider the employer's entire course of conduct, both before and after execution of the agreement, where subsequent events show that the settlement or other adjustment is not accomplishing its intended purpose because the employer has violated or continues to violate the Act after signing the agreement: Ingram Manufacturing Company, 5 N.L.R.B. 908; Picker X-Ray Corporation, Waite Manufacturing Division, Inc., 12 N.L.R.B. 1384; Chambers Corporation, 21 N.L.R.B. 808; Ohio Valley Bus Company, 38 N. L. R. B. 838; Sun Shipbuilding and Drydock Company, 38 N.L.R.B. 234; Gilfillan Brothers, Inc., 53 N. L. R. B. 574; Poloron Products, Inc., 64 N.L.R.B., No. 226. See also McKesson and Robbins, Inc., et al., 19 N.L.R.B. 778; affirmed 121 F. (2d) 84, 92-94 (App. D. C.) cert. den. 314 U. S. 674; Wilson & Co., Inc., 31 N.L.R.B. 440, enforced 126 F. (2d) 114 (C. C. A. 7) cert. den. 316 U. S. 699; Hicks Body Company, 33 N.L.R.B. 858; Norman H. Stone, et al., d/b/a J. H. Stone and Sons, 33 N.L.R.B. 1014, affirmed 125 F. (2d) 752, 756-757 (C. C. A. 7), cert. den. 317 U. S. 649; Houdaille-Hershey Corporation, 42 N.L.R.B. 713; Utah Copper Company, et al., 47 N.L.R.B. 757; affirmed 139 F. (2d) 788, 791 (C. C. A. 10), cert. den. 322 U. S. 731; Locomotive Finished Material Company, 52 N.L.R.B. 922; American Needlecraft, Inc., 59 N.L.R.B. 1384; Pacific Manifold Book Co., Inc., et al., 64 N.L.R.B., No. 211. Our practice in this respect has been recognized by the courts as a practice properly within the sphere of the Board's administrative discretion. See *Wallace Corporation v. N.L.R.B.*, supra, at pp. 241-242; *Canyon Corporation v. N.L.R.B.* 128 F. (2d) 953, 955-956 (C. C. A. 8); *N.L.R.B. v. Hawk and Buck Co., Inc.*, 120 F. (2d) 903, 905 (C. C. A. 5).

2. The domination and support of employee organizations, the accompanying interference, restraint, and coercion.

Upon the entire record, as summarized herein, we find that the respondents have continuously displayed an attitude of opposition to the self-organization of their employees, from the date of the earliest efforts made in that direction to the date of the hearing in the instant case. Before the execution of the contract with the IAM in 1938, James H. Cannon openly displayed his hostility to that organization, and Superintendent Cromwell attempted surveillance of organizational meetings. In 1941, shortly after UE initiated its campaign among the respondents' employees, James H. Cannon suggested the formation of the Contact Committee, a labor organization which, as we have found above, was dominated, interfered with and supported by the respondents. With respect to the Cannon Employees Recreation Association and CEA, it is clear, and we find, that CEA was the successor of CERA, that both organizations received assistance from the respondents in the course of their formation, and that the respondents continued to interfere with the administration of CEA and to support that organization throughout the entire period in which it was active as the representative of their employees.

At the very outset of Mandella's efforts to organize CERA, he received the active support of Superintendent Cromwell, who advised Employee Alvin George that the organization would be a "com-

pany union" and urged him to join. The first, and only, election of officers in CERA was held on company time and property, with the apparent acquiescence of Superintendent Cromwell. Subsequent meetings of its board of directors were attended by an attorney who later became the attorney for CEA. Representatives of the organization openly solicited members among the employees of the respondents without restriction as to time or place. The record contains no indication that CERA ever functioned as a recreational or athletic club, but is replete with statements by Ned Mandella to the effect that it had been organized with the knowledge and consent of management as the forerunner of a labor organization designed "to keep out the CIO."

That organization, the Cannon Employees Association, was formed on February 28, 1941, and took over the membership of the CERA in April of that year, when the latter organization voted to change its name and to continue operations under the charter previously secured for CEA. With two exceptions, the officers of CERA retained their position in the new organization without further election. Membership solicitation on behalf of CEA continued to occur on company time and property with the knowledge and acquiescence of management officials and foremen,⁴⁶ CERA membership cards be-

⁴⁶ We have found herein that leadmen were active on behalf of CEA. However, in view of our other findings, summarized herein, as to the knowledge of responsible management representatives with respect to the aims and activities of CEA, we find

ing distributed to new members until July 1941. This brief recital leaves no doubt as to the line of successorship between CERA and CEA. The fact that the former organization never functioned as a labor organization during its brief existence is immaterial, when the record clearly discloses the intention of all parties to use the ostensible objectives of CERA merely to mask the development of a rival of UE for the allegiance of the respondent's employees.

The intention of the respondents is clearly revealed in the series of "open letters" from James H. Cannon which were distributed to the employees as the contest between UE and CEA developed in the summer of 1941. Although it is true that these letters contained no overt expressions of preference for CEA, Cannon's open hostility to UE, and the fact that this organization was singled out for persistent attack, provided a clear indication of his desires with respect to self-organization of the em-

it unnecessary to pass upon the question of the respondents' liability for the acts of leadmen. Cf. *Mississippi Valley Structural Steel Company*, 64 N.L.R.B., No. 16. Thus, General Superintendent Hawkinson, who was tool room foreman during 1941, testified that he had requested Superintendent Cromwell to transfer Mandella to another department because the latter spent too much time on activities outside his regular duties. Hawkinson denied that he had been aware of the exact nature of Mandella's activities. However, whether Hawkinson's denial is credited or rejected, it is clear that Superintendent Cromwell was fully informed on the matter in issue.

ployees. The respondents now contend that the opinions expressed in these letters, and the manner of their expression, represent a privileged exercise of the rights of free speech guaranteed by the First Amendment to the Constitution. We find this contention to be without merit. The statements already cited, and others of similar tenor contained in the release of the respondents, represent a campaign obviously designed to convince the employees that their best interests would be served by allegiance to the "inside" organization which had been conceived with the blessing of the respondents and nurtured with their support. We find that the open letters of June 3, June 11 and June 25, and July 3, 1941, together with the concurrent series of letters urging employee support of the Contact Committee, considered in their totality and in connection with other conduct expressed herein, exceeded the bounds of permissible free expression, and formed an integral part of a coercive course of conduct calculated to interfere with, restrain, and intimidate employees in the exercise of their right to self-organization.

Further evidence of the respondents' position in the contest between UE and CEA is found in the conduct of its supervisory officials under the "no-solicitation" rule promulgated in August 1941. While the rule may have been adopted to deal with the "situation" created by the pre-election activities of these two organizations, the evidence establishes that its application was discriminatory. Several employees who had solicited for CEA on com-

pany time and property testified that their activities had not been observed or overheard by foremen. It is clear, however, from the testimony of George and Monjar, that responsible supervisory officials of the respondents were fully aware of these activities by CEA adherents, and that no effective measures were taken to enforce the rule as to them.⁴⁷ In Wiley's case, however, the superintendent acted with a promptitude which indicated clearly his intention to enforce the rule against adherents of UE. Countervailing evidence tending to show impartial enforcement of the rule has not been offered by the respondents. CEA literature posted on the Corporation's time clock in full view of a plant guard was permitted to remain undisturbed in the days immediately preceding the election of September 9, 1941, while the efforts of UE to achieve comparable distribution of its appeal my means of a sound truck appear to have been effectively "jammed" by blasts of sound from loud speakers on the roof of the respondents' plant. By this and other means noted herein, the respondents continued to oppose UE and thereby contributed effective support to CEA up to the very date of the election.

Within a month of the election, after a short period of negotiation, the respondents executed their first agreement with CEA. We regard it as particularly significant that this agreement provided for

⁴⁷ In this connection, we note particularly the statements of Plant Superintendent Cromwell and Foreman Glenn McClung.

a union shop, despite the previous public announcement of James H. Cannon that he would make no such agreement with an "outside" organization. There is no evidence that the respondents opposed the inclusion of a union security clause in their agreement with CEA, and we find that the existence of this provision was intended to, and did, provide a readily available and superficially plausible means for disposing of employees who were disinclined to accept the bargaining agent foisted upon them by the respondents.

The discharges of George and Armant, discussed more fully hereinafter, the active participation of Superintendent Cromwell and Foreman Drouet therein, and the discriminatory treatment of Monjar gave additional support to CEA during the term of its initial contract.

When UE renewed its organization campaign in 1942, James H. Cannon renewed his attacks on the organization, vilified its leadership, and praised CEA. We find that the open letters of May 29, June 19, November 3, and November 11, 1942, distributed by the respondents were intended to, and did, constitute an open espousal of CEA as the bargaining representative of the employees. In the context of their earlier activities, the assistance given to the Contact Committee, CERA, and CEA, and the discharges previously made, we find that the open partisanship of the respondents in the face of a pending question of representation constituted illegal intervention in the determination of that question, interfered with, restrained, and coerced

the employees, and contributed effective support to the organization chosen by the respondents as their candidate in the anticipated election.

The close relationship between the respondents and CEA did not cease after the Board election. The respondents continued, as before, to permit CEA elections on company time and property without taking adequate steps to prevent employees involved therein from receiving pay for time spent from work on business related to the election. The CEA board of directors was also permitted to hold meetings on company time and property. On two occasions set forth above, the Cannons intervened to influence the action of the CEA board of directors on matters related to the internal affairs of that organization. Officers of CEA were expressly permitted freedom of movement on the respondents' premises during working hours for the discharge of union business, without deduction from their pay, despite the absence of any contractual provision for such arrangements. The totality of the conduct summarized herein as occurring after the Board-ordered election constitutes, as previously noted, a "continuation of resumption" of the respondents earlier unfair labor practices.

Upon the record as a whole, we find that the respondents, by the course of conduct described above, have, since on or about January 1, 1941, dominated and interfered with the formation of CERA and the Canon Employees Association, interfered with the administration of the Cannon Employees Association and contributed financial aid and sup-

port thereto, and have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. The Discharges

Gus Palm.

Louis LaGuerre Drouet testified that on one occasion in the fall of 1941, when he discussed the "union situation" with Superintendent Cromwell in the presence of Howard Jorgensen, secretary of the latter, Cromwell said that he was "laying" for Gus Palm and had Jorgensen watching him. According to Drouet, Cromwell cited the company rule forbidding workers to wash up before the end of their shift, and stated that he intended to apply the rule to all UE supporters. Shortly after Palm's discharge, on December 5, 1941,⁴⁸ Cromwell is reported to have told Drouet that he had been able to dismiss Palm for a violation of the aforesaid rule, and expected to get rid of other UE adherents in the same fashion. The record contains no indication that Palm was discharged after any formal request by CEA, or that the provisions of the existing agreement with respect to discharges had any bearing on his dismissal.

Drouet's testimony in this connection, however, stands without corroboration in the record. For the

⁴⁸ The complaint alleges that Palm was dismissed on December 5, 1942, but the record shows that the discharge occurred in 1941. The date of the discharge is properly set forth in the amended charges of UE.

reasons previously cited, we find it to be unworthy of credence. On these grounds, and for the further reason that all available testimony with respect to Palm's discharge rests upon uncorroborated hearsay, we make no finding that the termination of his employment was discriminatory.

Alvin L. George.

The testimony of George with respect to his discharge, and the events which preceded it, is corroborated by two witnesses, and stands substantially unchallenged by the respondents. We find it to be credible. In substance, the evidence establishes that George, who had been employed by the company in 1938, joined UE early in 1941. Together with Ivan Jensen, a fellow employee, he made a radio speech in support of its campaign at the respondents' plant on August 26 of that year. Three or four days later he and Jensen were dismissed by Ray Cromwell "for making the radio broadcast." On the following Sunday, UE members at the plant voted to strike in protest against the discharge of George, Jensen, and several other UE stewards.

The strike lasted 1 day, and was settled by an agreement to restore the status quo pending a consent election and arbitration of the discharges as already noted. George and Jensen returned to work, and the arbitration hearing agreed upon as part of the settlement was held 1 week later. The arbitrators ordered George, Jensen, and another employee to apologize to James H. Cannon for statements they had made about him, and placed all three on pro-

bation for 45 days. This award was accepted by the employees.⁴⁹

Shortly after the execution of the first agreement between the respondents and CEA, George was directed by Cromwell to join the newly recognized organization. He, and several other employees who had received similar instructions, joined.⁵⁰ On an unspecified date in January, 1942, while at lunch in the plant cafeteria, George was questioned by Cromwell regarding his opinion of Harry Bridges and another leader of the CIO. George testified credibly and without contradiction that he expressed a favorable opinion, and that Cromwell "got mad and said we would all get our heads cut off some day." Sometime thereafter, in February, 1942, John Gibsen, then chairman of the CEA grievance committee, told George about an alleged "plot" that officials of CEA were concocting to request the discharge of Elsie Monjar, another UE supporter. George communicated this information to Monjar.

⁴⁹ George stated, and we find, that Cromwell, upon being advised of the award, remarked that he would "get" George before the 45 days had passed.

⁵⁰ George testified, without corroboration, that Robert Cannon was present in the offices of CEA at the time that he applied for membership, and thereby lent the weight of his endorsement to the organizational efforts of CEA. Cannon admitted a visit to the offices of CEA but denied that he had gone there to assist the organization, and further denied that he had been present when George's application was considered. We make no finding herein that Cannon's visit to the offices of CEA constituted support to that organization.

Within a few days, Monjar was called away from her work by Andrew Bereznak, vice-president of CEA, and Peter Vitale, a member of its board of directors. They took her to Superintendent Cromwell's office and accused her, in the presence of Cromwell and his secretary; of spreading false rumors with respect to her allegedly imminent discharge. Cromwell questioned her about the accusation and she identified George as the source of the report. George was called in and questioned by Cromwell. He demanded a hearing, and was told that one would be held on the following day.

At the hearing, which was held in the plant conference room, Monjar testified before Plant Superintendent Cromwell and the CEA board of directors regarding her conversation with George. He was thereupon formally charged with a violation of the CEA bylaws and questioned with respect to the conversation. His identification of Gibson as the source of the report was denied by Gibson and the hearing was closed. Within a week he was dismissed by Cromwell, "for spreading false rumors." He has not been employed by the respondents since March 4, 1942.⁵¹

⁵¹ The published rules of the Corporation state that the "spreading of false reports" shall be considered a cause for discharge, and the by-laws of CEA provide, in substantially similar language, for the expulsion of members guilty of such conduct. The record, however, does not show whether George was dismissed upon the request of CEA, or pursuant to the published rule of the Corporation.

It is clear that the "hearing" which was accorded George cannot be considered a formal trial. In any event, the record contains no evidence that he was expelled from CEA because of the charges presented at this meeting, and there is no indication that CEA requested his dismissal. We conclude, therefore, that George was discharged by the Corporation for an alleged violation of its published rule against the "spreading of false reports." While the promulgation and enforcement of a rule such as the one now under discussion appears to be within the permissible limits of managerial discretion, we find it unnecessary to pass upon this question. The application of the rule to George, we find, was intended to inhibit concerted activity on behalf of UE, and to support CEA thereby. In effect, the rule of the respondents was discriminatorily applied to terminate the employment of a UE adherent, on a pretext supplied by CEA, and in conformity with the obvious desires of that organization.

We find that Alvin L. George was discharged on March 4, 1942, and was thereafter refused reinstatement because he had joined and assisted UE, and because he had engaged in concerted activity with other employees for mutual aid and protection; that his discharge constituted discrimination in regard to his tenure of employment; and that by his discharge the respondents discouraged membership in UE, encouraged membership in CEA, and interfered with, restrained, and coerced their

employees in the exercise of the rights guaranteed them in Section 7 of the Act.

Clarence Joseph Armant.⁵²

Armant became an employee of the Corporation in May 1941. He joined UE shortly thereafter, became a shop steward, and campaigned actively for the organization prior to the consent election of 1941. He continued to act as a shop steward for UE after the election, but became a member of CEA shortly before that organization secured its contract with the respondents.⁵³

In July of the following year Armant and Harmon Fellows, another UE steward, submitted evidence to the resident Army inspector which indicated that certain employees of the respondents had been required to pay fees to private employment agencies in order to secure jobs with the re-

⁵² The recital which follows is based largely upon the testimony of Armant. Counsel for the respondent attempted to impeach his credibility by securing an admission that he had used another name many years before, while living in New Orleans. His use of the fictitious name, however, was satisfactorily explained by the witness, as a means of enabling him to engage in professional boxing without the knowledge of his family. In view of the fact that his testimony was substantially corroborated in several respects by a witness for the Board and several supervisory officials of the respondent, we find it to be entitled to full faith and credit.

⁵³ Armant testified that Foreman Glen McClung told him not to wear his UE steward's badge after the election, and advised him to join CEA, before he actually did so.

spondents. Their presence in the inspector's office was observed by an officer of CEA. Within a few days both men received identical letters from CEA requesting them to appear before its board of directors "due to unpleasant circumstances which have arisen." On August 7, 1942, the date set for the meeting, Armant appeared at the office of CEA. New Mandella read the charges against him, which referred specifically to the incident involving the Army inspector and also included a general accusation that he had made "false statements" about CEA. Louis LaGuerre Drouet, a foreman, was then a member of the board of directors, and participated in the inquiry.⁵⁴ After some discussion, the board found him guilty of the charges and asked him to resign. Similar action was taken with respect to Fellows, but the men refused to relinquish their employment.

On August 17, 1942, CEA demanded the discharge of Armant and Fellows, effective August 19. On or about the latter date Armant discovered that his time card had been pulled, and was advised by Ned Mandella that he had been discharged.⁵⁵ He immediately communicated with a UE representative, who referred the matter to the U. S. Conciliation

⁵⁴ Drouet had been appointed General Service Supervisor on February 21, 1942.

⁵⁵ The record indicates that Armant was dismissed on August 21, by H. J. Brady, operations manager for the respondents. Similar action with respect to Fellows appears to have been taken on the same date.

Service. About 2 weeks later, Armant and Fellows were reinstated with back pay.⁵⁶ The two men returned to work on September 12, 1942. Within one-half hour of their return, Boreznak and another member of the CEA board called the employees of Armant's department to a meeting in the plant cafeteria. Mandella, who addressed the meeting, informed Plant Superintendent Hawkinson, when the latter arrived, that the employees would not return to work as long as Armant and Fellows were in the plant. Robert Cannon, vice president and general manager of the Corporation, advised the employees that Armant would be sent home at once, and the respondents would "arbitrate" the question of his continued employment.⁵⁷ Hawkinson then explained the situation to Armant and requested that he leave the plant. Armant refused. Within a few minutes he was called to Hawkinson's office, where Robert Cannon explained that he would be paid for all time off, and that his future status would be subject to arbitration. Armant insisted that he should be permitted to address the employees, but Cannon refused to permit him to do so, and finally ordered him from the plant. While these discussions were proceeding, the night superintendent ex-

⁵⁶ In the meantime, on August 27, Armant had appeared on a radio program sponsored by UE and had broadcast an account of his discharge.

⁵⁷ The respondents made no deduction from the pay of the employees at the meeting for the time during which they had absented themselves from work, according to Superintendent Hawkinson.

plained the situation to Fellows, who left the plant without objection.

When Armant and Fellows returned to the plant on September 15, 1942, they proceeded at once to the conference room where the promised hearing was to be held. James H. Cannon represented the respondent. A representative of CEA was present, together with a neighboring manufacturer.⁵⁸ The charges against Fellows were considered first. Armant was then called in, and the charges against him were reviewed by James H. Cannon. Armant testified without contradiction, and we find, that the proceedings were quite a summary, that his attempts to present a defense were interrupted, and that he was not permitted to produce witnesses. The testimony of James H. Cannon, however, indicates that the hearing was not an arbitration proceeding. Section 29 of the contract between the respondents and CEA provided for the dismissal of employees expelled from the union, if the employer did not dispute the propriety of such action. It is the contention of the respondents that the hearing accorded to Armant and Fellows was held solely to afford Cannon an opportunity to review the charges against both men and to make up his mind as to the propriety of the action requested by the Union. Cannon did not concur in the request of CEA with respect to Fellows, who was ultimately reinstated, but he did concur with respect to Armant. The

⁵⁸ Representatives of the U. S. Navy and the Conciliation Service were also present, apparently as observers.

latter received no official notice of termination, but was subsequently advised by the U. S. Conciliator that Cannon had agreed to discharge him. He has not been employed by the respondents since the hearing.⁵⁹

Since Armant was dismissed at the request of CEA, an organization dominated and supported by the respondents, and under the terms of its invalid agreement with the respondents, the discharge cannot be regarded as privileged. Discharges made at the request of a dominated organization necessarily discourage membership in bona fide labor unions and constitute the most potent form of encouragement and support to the organizations so dominated. Such discharges, therefore, clearly fall within the bar of the statute. We find that the discharge of Armant on September 15, 1942, and the later refusal of the respondents to reinstate him constituted discrimination with respect to his tenure of employment to discourage membership in UE and encourage membership in CEA; and that the respondents, by such discharge, interfered with, restrained, and coerced their employees in the exer-

⁵⁹ Armant subsequently brought suit in the State courts, alleging that his expulsion from CEA and the subsequent discharge were improper. The Court ruled that his expulsion from CEA was void for lack of "due process." It was further found that the respondents had not conspired with CEA regarding his expulsion and discharge; the suit was therefore dismissed as to the respondents. Armant thereafter sought reinstatement, but the Corporation refused to rehire him.

cise of the rights guaranteed them in Section 7 of the Act.

John Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Mounnette Nye, Louis Tournio, Ada Lish, Eloise Hunt, Clarence William Youngberg, Jr.

In January 1943, immediately before the Board-ordered election already noted, UE chartered a separate local for employees of the respondents. Although CEA was certified as a result of the election, the UE local continued to exist. On May 26, 1943, shortly after execution of the second contract between the respondents and CEA, the executive board of the UE local, published the open letter described above, reaffirming their intention not to "join" CEA. Within a few days each of the UE members who had signed the letter were served with a formal complaint, which accused them of four distinct violations of the CEA bylaws. They were also advised that they would cease to be members in good standing of CEA prior to the scheduled date of the hearing on the aforesaid charges, and that failure to cure their dues delinquency prior to the hearing would lead to "action . . . on that score."⁶⁰

On June 8, seven of the eight employees who had

⁶⁰ On June 6, 1943, CEA notified the Corporation that 10 named employees were delinquent in their dues and demanded their discharge within 7 days. Seven of the employees named were members of the UE local's executive board. There is no evidence with respect to the union activity of the other employees named in the letter.

signed the original manifesto declared in a similar open letter that they would not attend the scheduled hearing on that date, and on the following day the Corporation was advised by letter that the seven employees in question had been expelled from CEA for infractions of its bylaws.⁶¹ The letter also stated that the dues delinquency of these individuals constituted an additional cause for their expulsion, and that three additional employees had been expelled for the latter reason.⁶² The organization requested that the employees named be dismissed within 7 days as required by its contract with the respondents. On June 12, 1943, the Corporation pulled the time cards of the seven employees,⁶³ in accordance with this request.

⁶¹ These included Lawrence, Evenstad, Sullivan, Nye, Tournie, Youngberg, and Donald M. McClellan.

⁶² These included Lish, Hunt, and Bernard Mackey.

⁶³ The record contains no explanation for the failure of the Corporation to pull the cards of McClellan and Mackey, the two expelled employees who are not named in the complaint. It is assumed that they had adjusted their differences with CEA prior to June 12.

During the course of the hearing counsel for the respondents stipulated that the testimony of all eight alleged discharges would be substantially identical with respect to the circumstances of their separation from the respondents' employ. A witness for the respondent, however, testified subsequently that the time card of Louis Tournie had not been pulled on June 12, and that he had in fact left the employ of the Corporation voluntarily on June 18. The witness testified that he had secured

Upon arriving at the plant on the date in question, Nye and Evenstad discovered that their time cards had been pulled. Together with Youngberg, who had been advised of his dismissal while at work, they called upon Plant Superintendent Hawkinson, who gave each of them a discharge slip which indicated that they had been discharged "as per agreement." When Sullivan, who had been absent on June 12, saw Hawkinson a few days later he informed her she had been discharged at the request of CEA for signing the open letter of the UE executive board on May 26.⁶⁴

None of the employees terminated on June 12 has been employed by the respondents since that date.

We find that the discharges now under discussion were effected upon the request of CEA, after the employees involved had been duly expelled from that organization, and under the terms of its contract with the respondents. Since we have found

this information from the pay-roll records of the Corporation. Upon this state of the record it would appear that the prior stipulation was erroneous insofar as it involved Tournie. We credit the records of the respondents in this connection and shall dismiss the consolidated complaint insofar as it affects the employee in question.

⁶⁴ There is some question in the record as to whether these discharges were expelled from CEA for signing the open letter, or for their admitted dues delinquency, and whether they were aware of the actual reason for their expulsion. In view of the determination proposed herein, there appears to be no necessity to resolve these questions.

that the contracting union had been established and maintained by unfair labor practices, it follows that the contract on which the respondents relied was not protected under the terms of the proviso to Section 8 (3), and that discharges made pursuant to its terms, necessarily fall within the general prohibition of the Section. We find that the respondents discharged Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Monnette Nye, Ada Lish, Eloise Hunt, and Clarence William Youngberg, Jr., because of their activities on behalf of UE and their opposition to and expulsion from CEA, and that, by such discharges the respondents discriminated against them with respect to their tenure of employment to discourage membership in UE and encourage membership in CEA, and interfered with, restrained, and coerced the discharges and other employees in the exercise of the rights guaranteed them by the Act.

Louis LaGuerre Drouet.

This employee, who had been a janitor foreman in the employ of the Corporation prior to a period of service with the U. S. Navy, returned on February 29, 1944, after his medical discharge. He was offered employment as a janitor leadman at his previous rate of pay, and accepted the position. After 11½ months on the job, Drouet was discharged on April 15, 1944.

Drouet testified, in substance, that he had used company typewriters and other equipment during working hours to cut stencils and issue mimeographed bulletins which urged the respondents' em-

ployees to join a CIO or AFL union rather than one which was company dominated. His supervisor, John Labash, is alleged to have found an imperfect copy of a previous bulletin; and Drouet stated that Labash confronted him as he was typing the stencil for a new bulletin and accused him of using company equipment "to hurt the company." Labash is also alleged to have accused Drouet of inefficiency and neglect of duty. Drouet testified that he was finally ejected from the premises by a guard on orders from Labash. He has not worked for the respondent since that date.

As in the case of his testimony with respect to Palm's discharge, Drouet's testimony about the circumstances under which his own employment was terminated stands without corroboration. For the reasons already noted, and in the absence of corroborative evidence, we find the record insufficient to support a finding that the discharge of Drouet was discriminatory.

Florence Maynard and Herbert L. Caffarel.

In November 1942, when Caffarel was elected to the CEA board and became president of the organization, CEA secured the services of Richard Franklin as its publicity director; and in March of the following year he became the full-time business agent of the organization. At approximately the same time Florence Maynard was designated as president and Herbert Caffarel became its treasurer. In December 1943 John Gibson became president of the organization; Maynard was elected to a minor office; and Caffarel failed to secure reelection.

According to his testimony, he became convinced shortly thereafter that the policies of Gibson and Franklin were detrimental to the best interests of the organization. In the CEA election which was held in the spring of 1944, he actively supported the candidacy of Rachel McBurnie for the board of directors, in the hope that she would support the faction which opposed Franklin. The factional struggle and the referendum which followed have been discussed above. Gibson and Franklin, as already noted, received a vote of confidence. New elections were held shortly thereafter, and the members of the board who had opposed Gibson and Franklin were replaced by other employees.

On June 29, 1944, Caffarel received a letter from Gibson⁶⁵ advising him that he had been accused of "spreading false reports" which were detrimental to the interests of CEA, and that he would be tried on these charges on July 1.

He and several other defendants,⁶⁶ engaged counsel with the assistance of the IAM. At the first session of the trial board on July 1, counsel requested further particulars with respect to the charges. On July 10, 1944, the defendants received a formal complaint and notice of a further hearing to be held on July 15. As a result of the trial held on that date and July 22, Caffarel and Maynard

⁶⁵ The letter was delivered to Caffarel in the office of Frank Ema, his foreman.

⁶⁶ Maynard, McBurnie, and two other employees formerly members of the CEA board had apparently received similar letters.

were expelled from membership in CEA, and the other defendants were exonerated. On July 24, 1944, CEA formally requested the dismissal of Maynard and Caffarel, and on July 29 the respondents complied.⁶⁷

As in the case of the 1943 discharges already discussed, it appears upon the record, and we find, that Maynard and Caffarel were discharged at the request of CEA, after they had been duly expelled from that organization, and under the terms of its contract with the respondents. For the reasons previously noted in connection with the discharge of Joan Lawrence and the other employees dismissed simultaneously with her, we find that the aforesaid discharge of Maynard and Caffarel constituted discrimination with respect to the tenure of their employment, encouraged membership in CEA, and interfered with, restrained, and coerced the discharges and other employees in the exercise of the rights guaranteed them by Section 7 of the Act.

⁶⁷ While proceedings before the trial board were pending, Maynard published an open letter protesting the action taken by CEA, and stated, *inter alia*, that her resignation had already been tendered to the Corporation for other reasons. There is no evidence to indicate that Maynard did, in fact, resign. At the time of the hearing Maynard was a member of the WAC and was not called as a witness. Caffarel testified, and we find, that he and Maynard received their final checks at the same time, and that both were advised by the personnel director that the Corporation had to dismiss them because of a request by CEA, following their expulsion from that organization.

IV. The effect of the unfair labor practices upon commerce.

The activities of the respondents set forth in Section III, above, occurring in connection with the operations of the respondents described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, tend to lead, and in this instance have led, to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Since we find that the respondents have engaged in certain unfair labor practices, we shall order that the respondents cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondents dominated, interfered with the administration of, and contributed support to, the Contact Committee and the Cannon Employees Association. The effects and consequences of the respondents' domination, interference, and support of these organizations render each of them incapable of serving the respondents' employees as a genuine collective bargaining agency. Although the Contact Committee has ceased to function, it has never been disestablished. The possibility exists, therefore, that it may be revived under the same or another, name. In view of this possibility, we shall order the respondents to withhold all recognition from the Contact Committee, by whatever name it may be known, if it should ever

return to active existence as a labor organization.⁶⁸ The continued recognition of CEA as the bargaining representative of the respondents' employees, also constitutes a continuing obstacle to the free exercise by the employees of the rights guaranteed them in the Act. Therefore, in order to effectuate the policies of the Act and to free the employees from the effects of the respondents' unfair labor practices, we shall order the respondents to withdraw all recognition from CEA as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and to completely disestablish that organization as such representative.

The agreements between the respondents and CEA were an essential part of the unfair labor practices, and constituted a means whereby the respondents have used an employer-dominated labor organization to frustrate self-organization and defeat genuine collective bargaining by their employees. We find that the respondents' agreements with CEA were, and are, invalid because they were made as an element of assistance to a labor organization which was dominated and interfered with by the respondents. Since the present agreement will perpetuate the respondents' unlawful domination and assist-

⁶⁸ *Elizabeth Arden, Inc.*, 45 N.L.R.B. 936, enforced as modified 139 F. (2d) 488 (C. C. A. 2); *Carter Carburetor Corporation*, 39 N.L.R.B. 1269, enforced 131 F. (2d) 927 (C. C. A. 8).

ance, we shall order the respondents to cease and desist from giving effect to any agreement between them and CEA as well as to any extension, renewal, modification, or supplement thereto and any superseding agreements which may now be in force. Nothing herein shall be taken however, to require the respondents to vary or abandon those wage, hour, and other substantive features of its relations with the employees themselves, which the respondents may have established in performance of the agreement as extended, renewed, modified, supplemented, or superseded.

We are also of the opinion that, under the circumstances of this case, the respondents should be required, as a means of remedying the unfair labor practices found, to reimburse each employee for any amounts which have been deducted from his or her wages for dues or assessments in CEA, particularly where, as here, such dues and assessments were withheld by the respondents in accordance with the terms of an invalid closed-shop agreement.⁶⁹ In this connection, however, we note the earlier determination of the Board's Regional Director, who refused to issue a complaint on March 18, 1943, on charges previously filed against the respondents under the Act. In the exercise of our administrative discretion as to the remedy most appropriate in the circumstances, we find that it will best effectuate the policies of the Act if our Order for the reim-

⁶⁹ Virginia Electric and Power Company, 44 N. L. R. B. 404, 436, enforced 132 F. (2d) 390, (C. C. A. 4), affirmed 319 U. S. 533.

bursement of dues or assessments deducted from the wages of employees for CEA is limited to the period since February 15, 1945, the date on which the complaint herein was issued, since upon the issuance of the complaint the respondents were placed on notice that the prior administrative determination was no longer in effect.⁷⁰

It has also been found that the respondents discriminated as to the hire and tenure of employment of Alvin L. George and Clarence Joseph Armant because they joined and assisted UE, opposed CEA, and engaged in concerted activities with other employees for mutual aid and protection, thus causing them losses in earnings. In order to effectuate the policies of the Act, we shall order the respondents to offer each of these individuals immediate and complete reinstatement to their former or substantially equivalent positions,⁷¹ without prejudice to their seniority and other rights and privileges.

Ordinarily, in order to effectuate the policies of the Act, we would also order the respondents to make whole the employees subjected to discrimination for the loss of earnings suffered by each. We note, however, that charges on behalf of George and Armant were filed by UE on September 26, 1942, withdrawn on October 15 of the same year and re-filed on January 16, 1945, in the present proceed-

⁷⁰ N.L.R.B. v. Baltimore Transit Company, 47 N.L.R.B. 109, enforced as modified 140 F. (2d) 51 (C. C. A. 4).

⁷¹ See Chase National Bank of the City of New York, 65 N.L.R.B. 327.

ing. We find that the original charges filed in 1942 were timely as to Armant, but tardy as to George.⁷² No adequate explanation of the reason for the delay as to George has been offered for our consideration. Upon this state of the record, we shall order the respondents to make whole George by payment to him of a sum limited to the amount which he would normally have earned as wages during the period when the original charges filed on his behalf were pending, and from the date when the charges were refiled to the date of the respondents' offer of reinstatement.⁷³ We shall order the respondents to make whole Armant by payment to him of a sum limited to the amount which he normally would have earned as wages during the period from the date of his discharge to the date on which the original charges filed on his behalf were withdrawn, and from the date when the charges were refiled to the date of the respondents' reinstatement offer.⁷⁴ In each case our order shall provide for the deduction of net earnings⁷⁵ by the particular discharges during the periods in question.

⁷² See *N.L.R.B. v. Walt Disney Productions*, 146 F. (2d) 44 (C. C. A. 9); *N.L.R.B. v. Mall Tool Company*, 119 F. (2d) 700, 702 (C. C. A. 7).

⁷³ *Taylor Milling Corporation*, 26 N.L.R.B. 424, 443; see also the cases cited in footnote 72, *supra*.

⁷⁴ *Taylor Milling Corporation*, *supra*.

⁷⁵ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the re-

In addition, we have found that the respondents discriminated as to the hire and tenure of employment of Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Monnette Nye, Ada Lish, Eloise Hunt, Clarence William Youngberg, Jr., Florence Maynard, and Herbert H. Caffarel, because they failed to maintain their membership in CEA, or because membership discriminatorily denied them by CEA pursuant to the terms of an invalid agreement which required membership in CEA as a condition of employment at the respondents' plant. In order to effectuate the policies of the Act, we shall order the respondents to offer each of these individuals, with the exception of Florence Maynard, immediate and complete reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges. With respect to Maynard, it appears that since her discharge she has entered the Women's Army Corps of the United States Army and held such status at the time of the hearing. If Maynard has since been discharged from the Women's Army Corps, we shall order the respondents to

spondents, which would not have been incurred but for the unlawful discharge and the consequent necessity of seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America. Lumber and Sawmill Workers Union, Local 2590*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

offer her immediate and full reinstatement to her former or a substantially equivalent position without prejudice to her seniority and other rights and privileges.¹⁶ If Maynard has not been discharged we shall order the respondents, upon application by Maynard within ninety (90) days after her discharge from the Women's Army Corps, to offer her immediate and full reinstatement to her former or a substantially equivalent position without prejudice to her seniority and other rights and privileges.

Our back pay order as to this employee, in whose behalf charges were timely filed, will require the respondents to make whole Maynard for any loss of earnings she has suffered or may suffer by reason of the respondents' discrimination against her, by payment to her of a sum of money determined as follows: (1) In the event that she has already been discharged from the Women's Army Corps she shall be paid the amount which she normally would have earned as wages during the periods from the date of her discharge by the respondents to the date upon which she entered the armed forces, and from the date of her discharge to the date of the respondents' reinstatement offer, less her net earnings during these periods; (2) In the event that she has not yet been discharged from the Wom-

¹⁶ If at the time of the respondents' offer of reinstatement less than 90 days have elapsed since Maynard's discharge from the Women's Army Corps, the respondent shall hold their offer of reinstatement open for a reasonable period, but in any event not less than the remainder of the 90-day period following Maynard's discharge.

en's Army Corps, she shall be paid the amount which she normally would have earned as wages during the periods from the date of her discharge by the respondents to the date on which she entered the armed forces, and from a date five (5) days after her timely application for reinstatement, if any, to the date of the reinstatement offer by the respondents, less her net earnings during these periods.⁷⁷

With respect to Herbert Caffarel, in whose behalf charges were also timely filed, we shall order the respondents to make whole for any loss of pay he may have suffered because of the respondents' discrimination, by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of his dismissal to the date of the reinstatement offer ordered herein, less his net earnings during that period.

We find that charges on behalf of Joan Lawrence, Erna A. Evenstad, Vivian Mary Sullivan, Monna Monnette Nye, Ada Lish, Eloise Hunt, and Clarence William Youngberg, Jr., were not filed within a reasonable period after their discharge, and that good cause for the delay has not been shown. We

⁷⁷ The provisions of our order in this connection shall be taken to mean that the respondents shall pay immediately to Maynard that portion of her net back pay accumulated between the date of the discrimination suffered by her and the date on which she entered the Women's Army Corps, without awaiting a final determination of the full amount of the award herein. The American Laundry Machinery Company, 45 N.L.R.B. 355, enforced 138 F. (2d) 889 (C. C. A. 2).

shall therefore limit our back pay order as to these employees, and require the respondents to make whole each of them for any loss of pay suffered as a result of the respondents' discrimination by payment to each of them of a sum of money equal to the amount each would have earned as wages from the date on which charges were filed in their behalf to the date of reinstatement offer which we shall order the respondents to make, less the net earnings of each during such period.

We expressly reserve, however, the right to modify the reinstatement and back-pay provisions of our order if such action is made necessary by a change of conditions in the future, and to make such supplements thereto as may hereafter become necessary in order to define or clarify their application to a specific set of circumstances not now apparent.⁷⁸

The maintenance of a lineage of company-dominated and supported organizations presents a ready and effective means of obstructing self-organization by employees and the free choice of their own representatives for the purposes of collective bargaining. The respondents' long domination and interference with two successive labor organizations, the contribution of support to them, the repeated demonstrations of the respondents' unwillingness to

⁷⁸ Matter of Fairmont Creamery Company, 65 N.L.R.B., No. 144; cf. N.L.R.B. v. New York Merchandising Company, 1348 (2d) 949 (C. C. A. 2). International Union v. Eagle Picher Mining and Smelting Company, 65 Sup. Ct. 1166.

recognize or bargain collectively with “outside” organizations representing their employees, the campaign of the respondents to defeat the organizational activities of UE—both before and after the consent election of 1941—the successive discharges of George and Armant to discourage membership in UE, the execution of closed-shop contracts with CEA despite an earlier announcement that such arrangements would not be made with any “outside” organization, the subsequent discharges of the UE adherents, and Maynard and Caffarel to support CEA and maintain its effectiveness as the chosen instrument of the respondents, ran the gamut of interference, restraint, and coercion with the rights guaranteed in Section 7 of the Act. The totality of the respondents’ conduct, we find, reveals a settled purpose to defeat self-organization and its objects among the employees by every available means, in circumstances which contain “the threat of continuing and varying efforts to attain the same end in the future.”⁷⁹ Because of the respondents’ unlawful conduct and its underlying purpose we are convinced and find that the unfair labor practices found are persuasively related to the other unfair labor practices prescribed by the Act, and that a danger of their commission in the future is to be anticipated from the course of the respondents’ conduct in the past. The preventive purposes of the Act will be thwarted unless our order is coextensive

⁷⁹ *N.L.R.B. v. Express Publishing Company*, 312 U. S. 426, 438; *N.L.R.B. v. Bradley Lumber Company of Arkansas*, 128 F. (2d) 768, 771 (C. C. A. 8).

with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7, to prevent a recurrence of unfair labor practices, and thereby to minimize strife which burdens and obstructs commerce and thus effectuate the policies of the Act, we shall order the respondents to cease and desist from in any other manner infringing upon the rights guaranteed in Section 7 of the Act.

Since we have not found that the respondents discriminated against Gus Palm, Louis Tournie, or Louis LaGuerre Drouet, in respect to the hire or tenure of their employment, the complaint will be dismissed insofar as it alleges such discrimination as to them.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, International Association of Machinists, Lodge 311, unaffiliated, and Cannon Employees Association, unaffiliated, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. The Contact Committee, unaffiliated, which formerly represented the respondents' employees, was a labor organization, within the meaning of Section 2 (5) of the Act.

3. By dominating and interfering with the for-

mation and administration of the Contact Committee and the Cannon Employees Association, and by contributing support to these organizations, the respondents have engaged in and are engaging unfair labor practices within the meaning of Section 8 (2) of the Act.

4. By discriminating in regard to the hire and tenure of employment of Alvin L. George, Clarence Joseph Armant, Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Monnette Ney, Ada Lish, Eloise Hunt, Clarence William Youngberg, Jr., Florence Maynard, and Herbert H. Caffarel, thereby discouraging membership in United Electrical Radio & Machine Workers of America, C.I.O. and the International Association of Machinists, Lodge 311, and encouraging membership in the Cannon Employees Association, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

5. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

7. By terminating the employment of Gus Palm, Louis Tournie, and Louis LaGuerre Drouet, the

respondents have not engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Cannon Manufacturing Corporation, its officers, agents, successors and assigns and James H. Cannon, an individual doing business as the Cannon Electric Development Company, Los Angeles, California, his agents, successors and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of the Contact Committee or the Cannon Employees Association, or with the formation and administration of any other labor organization, and from contributing financial or other support to the Contact Committee or the Cannon Employees Association, or to any other labor organization of their employees.

(b) Recognizing the Cannon Employees' Association, or any successor thereto, as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment;

(c) Giving effect to any and all contracts, supplements thereto or modifications thereof, or any

superseding agreements, with the Cannon Employees' Association;

(d) Encouraging membership in the Cannon Employees' Association, unaffiliated, or any other labor organization of their employees, and discouraging membership in United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations or the International Association of Machinists, Lodge 311, unaffiliated, or any other labor organization of their employees, by discriminatorily discharging or refusing to reinstate any employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of their employment;

(e) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Electrical, Radio & Machine Workers of America or the International Association of Machinists, Lodge 311, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which

the Board finds will effectuate the policies of the Act:⁵⁰

(a) Withdraw and withhold all recognition from the Cannon Employees' Association, as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment, and completely disestablish that organization as such representative;

(b) Refrain from recognizing the Contact Committee as the representative of any of their employees in the event that organization should ever return to active existence;

(c) Reimburse all employees, whose dues in the Cannon Employees Association were checked off by the respondents, for the amounts thus deducted from their wages since February 15, 1945;

(d) Offer to Alvin L. George, Clarence Joseph Armant, Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Monnette Nye, Ada Lish, Eloise Hunt, Clarence William Youngberg, Jr., and Herbert H. Caffarel, immediate and full reinstatement to their former or substantially equivalent

⁵⁰ The Board expressly reserves the right to modify the back-pay and reinstatement provisions of this order if made necessary by a change of conditions in the future, and to make such supplements thereto as may hereafter become necessary in order to define or clarify their application to a specific set of circumstances not now apparent.

positions^{s1} without prejudice to their seniority and other rights and privileges;

(e) Offer to Florence Maynard immediate and full reinstatement to her former or a substantially equivalent position, in the manner set forth above in section entitled "The remedy";

(f) Make whole Alvin L. George for any loss of pay he may have suffered by reason of the respondents' discrimination against him, by the payment of a sum of money equal to the amount which he normally would have earned as wages during the period from September 26 to October 15, 1942, when charges filed on his behalf were pending, and from January 16, 1945, to the date of the respondents' offer of reinstatement, less his net earnings^{s2} during these periods.

(g) Make whole Clarence Joseph Armant for any loss of pay he may have suffered by reason of the respondents' discrimination against him by the payment of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to October 15, 1942, when charges filed on his behalf were withdrawn, and from January 16, 1945, to the date of the respondents' offer of reinstatement, less his net earnings during these periods;

(h) Make whole Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Monnette Nye, Ada Lish, Eloise Hunt, and Clarence William

^{s1}See footnote 71, *supra*.

^{s2}See footnote 75 *supra*.

Youngberg, Jr., for any loss of pay which each of them may have suffered by reason of the respondents' discrimination against them, by the payment to each of them of a sum of money equal to the amount which each normally would have earned as wages from the date on which charges were filed on their behalf to the date of the respondents' offer of reinstatement, less the net earnings of each during such period:

(i) Make whole Florence Maynard for any loss of pay she may have suffered or may suffer by reason of the respondents' discrimination against her, by the payment to her of a sum of money determined in the manner set forth above in the section entitled "The remedy";

(j) Make whole Herbert H. Caffarel for any loss of pay he may have suffered by reason of the respondents' discrimination against him, by the payment of a sum of money equal to the amount which he normally would have earned as wages from July 29, 1944, the date of his discriminatory discharge, to the date of the respondents' offer of reinstatement, less his net earnings during this period;

(k) Post at their plants in Los Angeles, California, copies of the notice attached hereto, marked "Appendix A." Copies of the said notice, to be furnished by the Regional Director for the Twenty-first Region, after being duly signed by the respondents' representatives, shall be posted by the respondents immediately upon receipt thereof, and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places including all places

where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that the said notices are not altered, defaced, or covered by any other material;

(1) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondents have taken to comply herewith.

It Is Further Ordered that the complaint against Cannon Manufacturing Corporation and James H. Cannon, an individual, doing business as the Cannon Electric Development Company, be dismissed insofar as it alleges that the respondents have discriminated in regard to the hire and tenure of employment of Gus Palm, Louis Tournic, and Louis LaGuerre Drouet.

Pursuant to Section 37 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3—as amended, effective November 25, 1945, any party or counsel for the Board may, within fifteen (15) days from the date of the issuance of Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to these Proposed Findings, Conclusions, and Order, or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party

or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 37, should any party desire permission to argue orally before the Board, request therefore must be made in writing within ten (10) days from the date of these Proposed Findings, Conclusions, and Order.

Dated at Washington, D. C., this 12th day of July, 1946.

APPENDIX A

Notice to All Employees Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Hereby Disestablish Cannon Employees Association as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and we will not recognize it or any successor thereto for any of the above purposes.

We Will Not dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

We Will refrain from recognizing the Contact Committee as the representative of any of our employees in the event that organization should ever return to active existence.

We Will Not give effect to any and all contracts, supplements thereto, modifications thereof, or to any superseding agreements with Cannon Employees Association.

We Will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights or privileges previously enjoyed, and make them whole in accordance with the Order of the Board, for any loss of pay suffered as a result of the discrimination.

Alvin L. George, Clarence Joseph Armant, Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Monnette Nye, Ada Lish, Eloise Hunt, Clarence William Youngberg, Jr., Florence Maynard, Herbert H. Caffarel.

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Electrical, Radio & Machine Workers of America, CIO, or International Association of Machinists, Lodge 311, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. All our employees are free to become or remain members of either of these unions, or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any terms or condition of employment

against any employee because of membership in or activity on behalf of any such labor organization.

CANNON MANUFACTURING
CORPORATION,

By
Representative, Title.

CANNON ELECTRIC
DEVELOPMENT COMPANY,

By
Representative, Title.

Dated.....

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

(Affidavit of Service by Mail attached.)

(Return Postal Receipts attached.)

[Title of Board and Cause.]

Exceptions of Cannon Manufacturing Corporation and James H. Cannon, an Individual Doing Business as Cannon Electric Development Company, Respondents, to Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order.

* * * *

EXCEPTION No. 31

This exception goes to the entire order beginning near the bottom of page 33 and running through to the bottom of page 35 and to each and every paragraph therein with the exception of the last full paragraph on page 35 having to do with Gus Palm, Louis Tournie and Louis la Guerre Drouet, but which paragraphs are not specifically set out herein, it being further contended by the respondents that the "cease and desist" purpose of said order (1.(a) to (e)) are unnecessary for the reason that respondents have never at any time as disclosed by this record engaged in such practices from which they are ordered to cease and desist.

Dated at Los Angeles, California, September 6, 1946.

/s/ DAVID H. CANNON,
Attorney for Respondents.

In the United States Court of Appeals
for the Ninth Circuit

12142

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual, do-
ing business as CANNON ELECTRIC DE-
VELOPMENT COMPANY,

Respondents.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit.

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C.A., Supp. July 1947, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against respondent, Cannon Manufacturing Corporation, and its officers, agents, successors and assigns, and James H. Cannon, an individual doing business as the Cannon Electric Development Company, Los Angeles, California, and his agents, suc-

cessors and assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "In the Matter of Cannon Manufacturing Corporation and James H. Cannon, an individual, doing business as Cannon Electric Development Company and International Association of Machinists, Lodge 311, Case No. 21-C-2428," and "In the Matter of Cannon Manufacturing Corporation and James H. Cannon, an individual doing business as Cannon Electric Development Company and United Electrical, Radio & Machine Workers of America, CIL, Case No. 21-C-2474."

In support of this petition the Board respectfully shows:

(1) Respondents are engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on December 16, 1946, duly stated its findings of fact, conclusions of law, and issued an order directed to the respondent Cannon Manufacturing Corporation, and its officers, agents, successors and assigns, and respondent James H. Cannon, an individual doing business as the Cannon Electric Development Company, and his agents, suc-

cessors and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Cannon Manufacturing Corporation, and its officers, agents, successors and assigns, and James H. Cannon, an individual doing business as the Cannon Electric Development Company, Los Angeles, California, and his agents, successors and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of the Contact Committee, by whatever name it may be known, or of the Cannon Employees' Association, or the formation or administration of any other labor organization of their employees, and from contributing financial or other support to the Contact Committee or the Cannon Employees' Association, or to any other labor organization of their employees;

(b) Recognizing the Cannon Employees' Association, or any successor thereto, as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(c) Giving effect to any and all contracts with the Cannon Employees' Association, or to supplements thereto, or modifications thereof, or any superseding agreements;

(d) Encouraging membership in the Cannon Employee's Association, or any other labor organization of their employees, and discouraging membership in United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, or International Association of Machinists, Lodge 311, unaffiliated, or any other labor organizations of their employees, by discharging or refusing to reinstate any of their employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of their employment;

(e) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Electrical, Radio & Machine Workers of America or International Association of Machinists, Local 311, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:²

² The Board expressly reserves the right to modify the back-pay and reinstatement provisions of this order if made necessary by a change of conditions in the future, and to make such supplements thereto as may hereafter become necessary in order to define or clarify their application to a specific set of circumstances not now apparent.

(a) Withdraw and withhold all recognition from the Cannon Employees' Association, as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment and completely disestablish that organization as such representative;

(b) Refrain from recognizing the Contact Committee, by whatever name it may be known, as the collective bargaining representative of any of their employees, in the event that organization should ever return to active existence;

(c) Reimburse all employees, whose dues in the Cannon Employees' Association were checked off by the respondents, for the amounts thus deducted from their wages since February 15, 1945;

(d) Offer to Alvin L. George, Clarence Joseph Armant, Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Monnette Nye, Ada Lish, Eloise Hunt, Clarence William Youngberg, Jr., and Herbert H. Caffarel, immediate and full reinstatement to their former or substantial equivalent positions,³ without prejudice to their seniority or other rights and privileges;

³ In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position." See *Matter of The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 N.L.R.B. 827.

(e) Offer to Florence Maynard immediate and full reinstatement to her former or a substantially equivalent position, in the manner set forth in the proposed findings attached hereto, in the section entitled "The remedy";

(f) Make whole Alvin L. George for any loss of pay he may have suffered by reason of the respondents' discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from September 26 to October 15, 1942, when charges filed on his behalf were withdrawn and from January 16, 1945, to the date of the respondents' offer of reinstatement, less his net earnings⁴ during these periods;

(g) Make whole Clarence Joseph Armant for any loss of pay he may have suffered by reason of the respondents' discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to October 15, 1942, when charges filed on his behalf

⁴ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U. S. 7.

were withdrawn, and from January 16, 1945, to the date of the respondents' offer of reinstatement, less his net earnings during these periods;

(h) Make whole Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Monnette Nye, Ada Lish, Eloise Hunt, and Clarence William Youngberg, Jr., for any loss of pay which they may have suffered by reason of the respondents' discrimination against them, by payment to each of them of a sum of money equal to the amount which each normally would have earned as wages from the date on which charges were filed on their behalf to the date of the respondents' offer of reinstatement, less the net earnings of each during such period;

(i) Make whole Florence Maynard for any loss of pay she may have suffered or may suffer by reason of the respondents' discrimination against her, by payment to her of a sum of money determined in the manner set forth in the proposed findings attached hereto, in the section entitled "The remedy";

(j) Make whole Herbert H. Caffarel for any loss of pay he may have suffered by reason of the respondents' discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from July 29, 1944, the date of his discriminatory discharge, to the date of the respondents' offer of reinstatement, less his net earnings during this period;

(k) Post at their plants in Los Angeles, California, copies of notice attached to the Proposed Findings of Fact, Proposed Conclusions of Law and

Proposed Order, marked "Appendix A."⁵ Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the respondents' representatives, be posted by the respondents immediately upon receipt thereof, and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by any other material;

(1) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order, what steps the respondents have taken to comply herewith.

(3) On December 16, 1946, the Board's Decision and Order was served upon respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondents' counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the consolidated proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

⁵ In the event this order is enforced by decree of a Circuit Court of Appeals, there shall be inserted, before the words "A Decision and Order," the words: "A Decree of the United States Circuit Court of Appeals Enforcing."

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the so much of the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent Cannon Manufacturing Corporation, and its officers, agents, successors and assigns, and James H. Cannon, an individual doing business as the Cannon Electric Development Company, and his agents, successors and assigns, to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notice to be posted by respondents, shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendix A, Notice to All Employees, Pursuant to a decree of the United States Court of Appeals enforcing an order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that."

NATIONAL LABOR RELATIONS BOARD,

/s/ A. NORMAN SOMERS,

Assistant General Counsel.

Dated at Washington, D. C., this 24th day of December, 1948.

District of Columbia—ss:

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn to before me this 24th day of December, 1948.

(Seal) /s/ ROSE MARY FILIPOWICZ,
Notary Public, District of Columbia.

My Commission Expires March 15, 1953.

[Endorsed]: Filed December 31, 1948. Paul P. O'Brien, Clerk.

CA No. 12142

United States of America—ss:

The President of the United States of America:

To Cannon Manufacturing Corporation and James H. Cannon, d/b/a/ Cannon Electric Development Co., 3209 Humboldt St., Los Angeles, Calif.; Cannon Employees Association, 215 W. Ave., 33 Los Angeles, Calif.; United Electrical, Radio & Machine Workers of America, CIO, Att: Judy Dunks, 5851 S. Avalon Blvd., Los Angeles, Cal., and International Ass'n of Machinists, Lodge 311, AFL, 421 Van Nuys Bldg., Los Angeles, Calif.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 31st day of December, 1948, a petition of the National Labor Relations Board for enforcement of its order entered on December 16, 1946, in a proceeding known upon the records of the said Board as

“In the Matter of Cannon Manufacturing Corp., and James H. Cannon, an individual, d/b/a Cannon Electric Development Co., and International Ass'n of Machinists, Lodge 311, Case No. 21-C-2428, and In the Matter of Cannon Manufacturing Corp., and James H. Cannon, an individual, d/b/a/ Cannon Electric

Development Co., and United Electrical, Radio & Machine Workers of America, CIO, Case No. 21-C-2474,"

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, the 31st day of December in the year of our Lord one thousand, nine hundred and forty-eight.

(Seal) /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

(Return of Service of Writs attached.)

[Endorsed]: Filed Jan. 13, 1949. Paul P. O'Brien,
Clerk.

CA No. 12142

United States of America—ss:

The President of the United States of America:

To Cannon Manufacturing Corporation and James H. Cannon, d/b/a/ Cannon Electric Development Co., 3209 Humboldt St., Los Angeles, Calif.; Cannon Employees Association, 215 W. Ave., 33 Los Angeles, Calif.; United Electrical, Radio & Machine Workers of America, CIO, Att. Judy Dunks, 5851 S. Avalon Blvd., Los Angeles, Cal., and International Ass'n of Machinists, Lodge 311, AFL, 421 Van Nuys Bldg., Los Angeles, Calif.,

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 31st day of December, 1948, a petition of the National Labor Relations Board for enforcement of its order entered on December 16, 1946, in a proceeding known upon the records of the said Board as

“In the Matter of Cannon Manufacturing Corp., and James H. Cannon, an individual, d/b/a/ Cannon Electric Development Co., and International Ass'n of Machinists, Lodge 311, Case No. 21-C-2428, and In the Matter of Cannon Manufacturing Corp., and James H. Cannon, an individual, d/b/a/ Cannon Electric De-

velopment Co., and United Electrical, Radio & Machine Workers of America, CIO, Case No. 21-C-2474,"

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 31st day of December in the year of our Lord one thousand, nine hundred and forty-eight.

PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

(Return Service of Writ attached.)

[Endorsed]: Filed Jan. 1, 1949. Paul P. O'Brien, Clerk.

In the United States Court of Appeals
for the Ninth Circuit

No. 12142

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual, doing
business as CANNON ELECTRIC DEVELOP-
MENT COMPANY,

Respondents.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit.

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C.A., Supp. July 1947, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against respondent, Cannon Manufacturing Corporation, and its officers, agents, successors and assigns, and James H. Cannon, an individual doing business as the Cannon Electric Development Company, Los Angeles, California, and his agents, successors and assigns. The consolidated proceeding resulting in said order is known upon the records of

the Board as "In the Matter of Cannon Manufacturing Corporation and James H. Cannon, an individual, doing business as Cannon Electric Development Company and International Association of Machinists, Lodge 311, Case No. 21-C-2428," and "In the Matter of Cannon Manufacturing Corporation and James H. Cannon, an individual doing business as Cannon Electric Development Company and United Electrical, Radio & Machine Workers of America, CIO, Case No. 21-C-2474."

In support of this petition the Board respectfully shows:

(1) Respondents are engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on December 16, 1946, duly stated its findings of fact, conclusions of law, and issued an order directed to the respondent Cannon Manufacturing Corporation, and its officers, agents, successors and assigns, and respondent James H. Cannon, an individual doing business as the Cannon Electric Development Company, and his agents, successors and assigns. So much of the aforesaid

order as relates to this proceeding provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Cannon Manufacturing Corporation, and its officers, agents, successors and assigns, and James H. Cannon, an individual doing business as the Cannon Electric Development Company, Los Angeles, California, and his agents, successors and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of the Contract Committee, by whatever name it may be known, or of the Cannon Employees' Association, or the formation or administration of any other labor organization of their employees, and from contributing financial or other support to the Contact Committee or the Cannon Employees' Association, or to any other labor organization of their employees;

(b) Recognizing the Cannon Employees' Association, or any successor thereto, as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(c) Giving effect to any and all contracts with the Cannon Employees' Association, or to supplements thereto, or modifications thereof, or any superseding agreements;

(d) Encouraging membership in the Cannon Employee's Association, or any other labor organization of their employees, and discouraging membership in United Electrical, Radio & Machine Workers of America, affiliated with the Congress of Industrial Organizations, or International Association of Machinists, Lodge 311, unaffiliated, or any other labor organizations of their employees, by discharging or refusing to reinstate any of their employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of their employment;

(e) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Electrical, Radio & Machine Workers of America or International Association of Machinists, Local 311, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:²

² The Board expressly reserves the right to modify the back-pay and reinstatement provisions of this order if made necessary by a change of conditions in the future, and to make such supplements thereto as may hereafter become necessary in order to define or clarify their application to a specific set of circumstances not now apparent.

(a) Withdraw and withhold all recognition from the Cannon Employees' Association, as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment and completely disestablish that organization as such representative;

(b) Refrain from recognizing the Contact Committee, by whatever name it may be known, as the collective bargaining representative of any of their employees, in the event that organization should ever return to active existence;

(c) Reimburse all employees, whose dues in the Cannon Employees' Association were checked off by the respondents, for the amounts thus deducted from their wages since February 15, 1945;

(d) Offer to Alvin L. George, Clarence Joseph Armant, Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan; Monna Monnette Nye, Ada Lish, Eloise Hunt, Clarence William Youngberg, Jr., and Herbert H. Caffarel, immediate and full reinstatement to their former or substantially equivalent positions,² without prejudice to their seniority or other rights and privileges;

² In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position." See Matter of The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch, 65 N.L.R.B. 827.

(e) Offer to Florence Maynard immediate and full reinstatement to her former or a substantially equivalent position, in the manner set forth in the proposed findings attached hereto, in the section entitled "The remedy";

(f) Make whole Alvin L. George for any loss of pay he may have suffered by reason of the respondents' discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from September 26 to October 15, 1942, when charges filed on his behalf were withdrawn and from January 16, 1945, to the date of the respondents' offer of reinstatement, less his net earnings⁴ during these periods;

(g) Make whole Clarence Joseph Armant for any loss of pay he may have suffered by reason of the respondents' discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to October 15, 1942, when charges filed on

⁴ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U. S. 7.

his behalf were withdrawn, and from January 16, 1945, to the date of the respondents' offer of reinstatement, less his net earnings during these periods:

(h) Make whole Joan Lawrence, Erma A. Evenstad, Vivian Mary Sullivan, Monna Monnette Nye, Ada Lish, Eloise Hunt, and Clarence William Youngberg, Jr., for any loss of pay which they may have suffered by reason of the respondents' discrimination against them, by payment to each of them of a sum of money equal to the amount which each normally would have earned as wages from the date on which charges were filed on their behalf to the date of the respondents' offer of reinstatement, less the net earnings of each during such period;

(i) Make whole Florence Maynard for any loss of pay she may have suffered or may suffer by reason of the respondents' discrimination against her, by payment to her of a sum of money determined in the manner set forth in the proposed findings attached hereto, in the section entitled "The remedy";

(j) Make whole Herbert H. Caffarel for any loss of pay he may have suffered by reason of the respondents' discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from July 29, 1944, the date of his discriminatory discharge, to the date of the respondents' offer of reinstatement, less his net earnings during this period:

(k) Post at their plants in Los Angeles, California, copies of notice attached to the Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order, marked "Appendix A."⁵ Copies of said notice, to be furnished by the Regional Director for the 'Twenty-first Region, shall after being duly signed by the respondents' representatives, be posted by the respondents immediately upon receipt thereof, and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by any other material;

(l) Notify the Regional Director for the 'Twenty-first Region in writing within ten (10) days from the date of this Order, what steps the respondents have taken to comply herewith.

(3) On December 16, 1946, the Board's Decision and Order was served upon respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondents' counsel.

(4) Pursuant to Section 10 (e) of the National

⁵ In the event this order is enforced by decree of a Circuit Court of Appeals, there shall be inserted, before the words "A Decision and Order," the words: "A Decree of the United States Circuit Court of Appeals Enforcing."

Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the consolidated proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the so much of the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent Cannon Manufacturing Corporation, and its officers, agents, successors and assigns, and James H. Cannon, an individual doing business as the Cannon Electric Development Company, and his agents, successors and assigns, to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notice to be posted by respondents, shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendix A. Notice to All Employees. Pursuant to a decree of the United States Court of Appeals enforcing an order of the National Labor Relations Board and in order to effectuate the pol-

icles of the National Labor Relations Act, as amended, we hereby notify our employees that:"

NATIONAL LABOR RELATIONS
BOARD

/s/ A. NORMAN SOMERS
Assistant General Counsel

Dated at Washington, D. C., this 24th day of
December 1948.

[Endorsed]: Filed December 31, 1948. Paul P.
O'Brien, Clerk.

District of Columbia—ss.

A. Norman Somers, being first duly sworn, states
that he is Assistant General Counsel of the National
Labor Relations Board, petitioner herein, and that
he is authorized to and does make this verification in
behalf of said Board; that he has read the foregoing
petition and has knowledge of the contents thereof;
and that the statements made therein are true to the
best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn to before me this 24th day
of December, 1948.

(Seal) /s/ ROSE MARY FILIPOWICZ,
Notary Public, District of Columbia.
My Commission Expires March 15, 1953.

In the United States Court of Appeals
For the Ninth Circuit

CA No. 12142

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual doing
business as CANNON ELECTRIC DEVELOP-
MENT COMPANY,

Respondents.

ANSWER OF RESPONDENTS

To The Honorable Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now Cannon Manufacturing Corporation
and James H. Cannon, an individual, doing business
as Cannon Electric Development Company, respond-
ents, and answering the Petition for Enforcement of
an Order of the National Labor Relations Board
asserts:

FIRST DEFENSE

The petition fails to state a claim against these
respondents or against either of them upon which
relief can be granted.

SECOND DEFENSE

Respondents admit the allegations contained in
paragraphs (1), (2), (3), and (4) of the said peti-
tion but allege that the relief prayed for in said peti-
tion should not be granted by reason of the fact that

there was no substantial evidence nor any evidence offered or received in the proceedings before the Trial Examiner or before the National Labor Relations Board to support the said Order, part of which is set out in paragraph (2) of the petition herein, or any part thereof.

THIRD DEFENSE

That said petition should not be granted by reason of Respondent's Exceptions to said Order and which said Respondents' Exceptions are set out as part of the Certificate of the National Labor Relations Board, dated December 24, 1948, and designated therein as item (11) and duly filed herein, reference to which is specifically made and by this reference incorporated herein and made a part hereof.

Wherefore, these respondents pray that this proceeding be dismissed, that respondents be allowed to go hence with their costs and with all other proper relief.

Dated February 9, 1949.

/s/ DAVID H. CANNON,
Attorney for Respondents.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed February 10, 1949. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS

The National Labor Relations Board, petitioner, pursuant to Rule 19 (6) of this Court files the following statement of points upon which it intends to rely in the enforcement proceeding:

1. The Board's findings that respondents violated Section 8 (1), (2), and (3) of the National Labor Relations Act are supported by substantial evidence.

The Board's order is valid and proper under the Act.

/s/ A. NORMAN SOMERS,

Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 24th day of December 1948.

[Endorsed]: Filed Dec. 31, 1948, Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION TO DISPENSE WITH THE PRINTING OF CERTAIN EXHIBITS

It is hereby stipulated by and between the parties to the above-entitled action that the following exhibits designated as constituting part of the record before the Court need not be included in the printed record but will be filed with the Clerk and may be

considered by the Court with the same effect as if printed:

Board Exhibits Nos. 1A-1Z, 28, 29, 30, 32, 34, 36, 39, 42, 46, 48, 57, 68A, 68K, 68P, 73, 74.

Respondents' Exhibits 34, 37, 38A, 38B.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations Board, Attorney for Petitioner.

Dated at Washington, D. C., this 24th day of December 1948.

/s/ DAVID H. CANNON,
Attorney for Respondents.

Dated at Los Angeles, California, this 4th day of January, 1949.

[Endorsed]: Filed January 5, 1949.

[Endorsed]: No. 12142. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, petitioner, vs. Cannon Manufacturing Corporation and James H. Cannon, an individual, doing business as Cannon Electric Development Company, respondents. Transcript of Record. Petition for enforcement of order of the National Labor Relations Board.

Filed December 31, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

Before the National Labor Relations Board
Twenty-first Region

Case No. 21-C-2428

In the Matter of

CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual, doing
business as CANNON ELECTRIC DEVELOP-
MENT COMPANY

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, LODGE 311, A.F.L.

Case No. 21-C-2474

CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual, doing
business as CANNON ELECTRIC DEVELOP-
MENT COMPANY

and

UNITED ELECTRICAL, RADIO AND MA-
CHINE WORKERS OF AMERICA, C.I.O.

Room 301, Board of Trade Building,
111 West Seventh Street,
Los Angeles, California
Thursday, May 24, 1945.

The above entitled matter came on for hearing,
pursuant to notice, at 10:00 o'clock a. m.

Before: James C. Batten, Trial Examiner. [1*]

Appearances: Charles M. Ryan, 900 Board of
Trade Building, 111 West Seventh Street, Los An-

* Page numbering appearing at foot of page of original certified Transcript of Record.

geles, California, appearing on behalf of the National Labor Relations Board. David H. Cannon, 650 South Spring Street, Los Angeles, California, appearing on behalf of Cannon Manufacturing Corporation and James H. Cannon, an individual, doing business as Cannon Electric Development Company. Judy Dunks, 5851 South Avalon Boulevard, Los Angeles, California, appearing on behalf of United Electrical, Radio and Machine Workers of America, C.I.O. [2]

* * * *

Mr. Ryan: Mr. Examiner, at this time I ask the reporter to mark for identification the formal papers upon which this proceeding rests, marking those papers as they appear in the [4] formal file chronologically lettered 1-A through 1-X, inclusive.

(Thereupon, the documents referred to were marked Board's Exhibits Nos. 1-A through 1-X, inclusive, for identification.)

Mr. Ryan: Those formal papers include the charges, amended charges, complaint, amended complaint, and second amended complaint, the proof of service and the Board's order consolidating these two cases for hearing in this matter. [5]

* * * *

Trial Examiner Batten: I think perhaps, Mr. Cannon, if you have no objection, it may be, as I should have said a minute ago, that any formal papers, including those of the respondent, as well as the organizations involved, I would like to have made a part of Board's Exhibit 1. That is prin-

cipally for the convenience of you attorneys later, so that you will find all the formal papers in one exhibit, instead of scattered through the record.

Mr. Cannon: That is agreeable.

Trial Examiner Batten: That would then be Board's Exhibit 1-Y, the answer.

(Thereupon, the document referred to was marked Board's Exhibit No. 1-Y, for identification.)

Trial Examiner Batten: Then it may be understood, Mr. Cannon, you may have—what, two days?

Mr. Cannon: I would like more, if I may have it.

Trial Examiner Batten: Three days?

Mr. Cannon: I would like until Monday.

Trial Examiner Batten: Until Monday to file an amended answer. [9]

* * * *

Mr. Cannon: At this time the Cannon Manufacturing Corporation and Cannon Electric Development Company move for a continuance on this matter based primarily on the fact the issues have been entirely changed now by the reason of the late filing of these amendments, these amended charges. We are not prepared to meet them at this time, not having had time to consider them and not knowing of their nature. That is one motion.

The other motion is we object to any hearing on the matter now on the grounds that the persons filing the complaints and issues framed in this particular matter have been passed upon with a degree of finality by the National Labor Relations Board.

as embodied in the affirmative defense set up in the answer, and which I will not read at length unless I am required to do so by you.

Trial Examiner Batten: Well, naturally, I reserve my decision on both of those until I have an opportunity to read it. [11]

* * * *

Trial Examiner Batten: I think we are ready to proceed.

This morning counsel for the respondent moved for a continuance based upon the issues that have arisen due to the amended charges and the second amended complaint. I have reviewed the formal papers and their motion is denied.

Then, I believe your second matter was not in the form of a motion, but was an objection to proceeding practically upon the same basis. Is that correct, Mr. Cannon?

Mr. Cannon: It is upon that basis and also upon the additional basis that matters that have heretofore been adjudicated by the Board covered the same issues.

Trial Examiner Batten: Of course, that would be denied, very definitely. If that is true, of course, that would be a matter of defense, and as I see it, it is affirmative defense and not a matter for dismissing upon motion. I suppose you are referring to the other proceeding?

Mr. Cannon: Yes.

Trial Examiner Batten: That is denied. [26]

* * * *

Mr. Ryan: Mr. Examiner, I do not believe I

have as yet [31] offered the formal papers in this proceeding, and I now do so offer them. I offer the formal papers which have been heretofore marked for identification as Board's Exhibit 1-A through 1-Y, inclusive, as Board's Exhibits 1-A through 1-Y inclusive.

Trial Examiner Batten: Is there any objection?

Mr. Cannon: No objections other than originally stated in my answer and motion.

Trial Examiner Batten: Those objections will stand.

Mr. Cannon: Then there is no objection.

Trial Examiner Batten: They will be received as Board's Exhibits 1-A through Y, and that includes the answer, which will be amended by Monday, is that correct?

Mr. Cannon: That is correct.

Trial Examiner Batten: They may be received.

(The documents heretofore marked as Board's Exhibits Nos. 1-A through 1-Y, for identification, were received in evidence.) [32]

* * * *

Mr. Ryan: I am proposing a stipulation as follows: That Cannon Manufacturing Corporation is a California corporation, and James H. Cannon is an individual doing business as Cannon Electric Development Company, and that the two organizations which I have just mentioned are engaged in the manufacture of cable connections and electrical specialties at a plant in Los Angeles, California.

Mr. Cannon: We will stipulate that, except that

the Cannon Electric Development Company does not do any manufacturing. It engineers and designs equipment.

Mr. Ryan: I will agree to that amendment. That during the calendar year ending December 31, 1944, the company purchased materials in excess of the amount of \$3,000,000.00.

Trial Examiner Batten: Where you talk of the company——

Mr. Ryan: I am speaking now of the two companies I have just mentioned, the Cannon Manufacturing Corporation and James H. Cannon doing business as Cannon Electric Development Company.

Trial Examiner Batten: You are speaking now of the respondents jointly?

Mr. Ryan: I am speaking of the respondents jointly.

Trial Examiner Batten: Let's have this understanding now so that it will be clear in the record. When you speak of the corporation, you are speaking of the Cannon Manufacturing Corporation. When you speak of the company, you are speaking of the Cannon Electric Development Company, and when you speak of them jointly, you will call them respondents. Then the record will be clear and anyone else reading it will understand it.

Mr. Ryan: That certain materials were purchased for use in the plant of the respondents and that approximately \$500,000.00 worth of said purchases were obtained from points outside the State of California.

Mr. Cannon: Just a moment. The purchases that

you speak about, Mr. Ryan, were purchased outside the State of California by the Cannon Manufacturing Corporation, not by Cannon Electric Development Company.

Mr. Ryan: All right. I will accept that amendment. That during the same period, that is the calendar year ending December 31, 1944, the respondent had gross sales of approximately \$11,000,000.00, and approximately 85 per cent of those sales were made to aircraft companies having contracts with the United States Government. [34]

Mr. Cannon: We will stipulate that the corporation had sales in excess of \$11,000,000.00 during that period, but they were not sold outside the State of California by the manufacturing corporation.

Mr. James H. Cannon: The corporation did not have that much sales and it sold nothing outside of California. The company is a contracting agency and a considerable portion was sold that way, and the corporation didn't sell anything except to the Cannon Electric Development Company.

Trial Examiner Batten: As I understand this, everything which the corporation manufactures it sells to the development company.

Mr. James H. Cannon: For that duration period.

Trial Examiner Batten: And the development company is the one who makes the deliveries.

Mr. James H. Cannon: It does the delivering and the contracting and the collecting and the advertising and the engineering.

Trial Examiner Batten: In other words, the

company is the one that is responsible for making deliveries.

Mr. James H. Cannon: That is right, and they ship and bill. They are the creative end of the unit.

Trial Examiner Batten: Whatever amount is sold by the corporation is sold through the company, and the company in turn sold 85 per cent to the United States Government or its [35] agencies?

Mr. James H. Cannon: Well, indirectly, yes. The direct government sales do not exceed 15 per cent, but the others are indirect, like to the aircraft companies.

Trial Examiner Batten: In other words, the balance of 70 per cent was sold to the aircraft industry?

Mr. James H. Cannon: Yes, and a large part of it in California.

Trial Examiner Batten: A large part in California.

Mr. James H. Cannon: I wouldn't say the majority, but a considerable proportion.

Trial Examiner Batten: By the company?

Mr. James H. Cannon: That is right.

Trial Examiner Batten: And the company purchased all of its products from the corporation?

Mr. James H. Cannon: That's right.

Mr. Ryan: Mr. Cannon made one statement that the total sales were not in the amount of \$11,000.-000.00 for that period. Could you estimate what it was, approximately?

Mr. James H. Cannon: Well, by the corporation,

I don't think so. I haven't got those figures before me.

Trial Examiner Batten: Roughly, in excess of what amount, in excess of \$10,000,000.00 or \$6,000,000.00 or \$5,000,000.00, or what can you say in excess of?

Mr. James H. Cannon: I would say around \$7,000,000.00, [36] a little over. It runs about 30 per cent less than the corporation.

Trial Examiner Batten: In other words in excess of \$7,000,000.00.

Mr. James H. Cannon: Well, that would be pretty close. That would be all right.

Mr. Ryan: Is the stipulation satisfactory now, sir?

Mr. Cannon: As modified, it is all right. We so stipulate.

Mr. Ryan: As I understand it, the respondents do not contest the jurisdiction of the Board in this case?

Mr. Cannon: We will in view of the showing that has just been made, we will contest the jurisdiction, that is, as far as the corporation is concerned.

Trial Examiner Batten: You admit that the company, then, is engaged in commerce within the meaning of the Act?

Mr. Cannon: Yes.

Trial Examiner Batten: But as far as the corporation is concerned, you contest the jurisdiction of the Board; is that correct?

Mr. Cannon: Yes. I realize that is slightly dif-

ferent than my understanding with Mr. Ryan this morning, because I did not fully understand the facts this morning. I don't want you to think I am repudiating anything I agreed to this morning, and if it has caused any embarrassment or delay, [37] I will be glad to compensate in some way, if we can. It was a misunderstanding.

Mr. Ryan: I understand. At this time I would like to call Mr. James Cannon to the witness stand, please.

JAMES H. CANNON,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): Will you state your full name, please, Mr. Cannon?

A. James H. Cannon.

Q. What is your address?

A. I use the business address of the plant, 3209 Humboldt, or Box 75, Station A, Los Angeles. That is where I receive my mail through the Station.

Q. Mr. Cannon, you are associated, are you not, with the Cannon Manufacturing Corporation, and also the Cannon Electric Development Company, which are involved in this proceeding?

A. Yes, sir, I own the latter as a sole proprietorship, and I am president of the former.

Q. Of the corporation? A. That's right.

Q. How long have you held such a position?

A. Well, I created the business in 1915 under

(Testimony of James H. Cannon.)

the name of [38] Cannon Electric Development Company, and by 1918 I was beautifully broke, but I developed some new product and in 1920 I incorporated to protect \$5,500.00, invested by outside stockholders. It is 30 years this month.

Q. That is since you originally went into the business, is that right?

A. That is right, yes.

Q. With respect to the Cannon Electric Development Company, I understand you operate that as an individual, is that right? A. Yes.

Q. When did that organization come into existence, approximately?

A. Cannon Electric Development Company came in in 1915 and operated as such until 1920, at which time we incorporated.

Q. But I am talking about the Cannon Electric Development Company.

A. That was the original name; for five years it was unincorporated, and then we were incorporated in 1920 and still are, but we changed the name in 1939 of the corporation.

Q. You changed it to Cannon Manufacturing Corporation? A. That is right.

Q. But you still continued the organization known as Cannon Electric Development Company, also?

A. I filed and registered a fictitious firm name at that [39] time.

Trial Examiner Batten: On what date was that?

(Testimony of James H. Cannon.)

The Witness: April, 1939, would be near enough, because we were delayed there waiting for the tax auditors to get a final closing statement so we could start out.

Q. (By Mr. Ryan): Mr. Cannon, the plant which was operated by Cannon Manufacturing Corporation is located at 3209 Humboldt Street?

A. That is at 3209 Humboldt Street, that is the number 2 plant. Then we have the old plant across from the Santa Fe at 420 West Avenue 33rd.

Q. And both of these companies, the corporation and the Cannon Electric Development Company, do their business in that plant, is that right?

A. We do that from a central office, yes, from the Humboldt Street address.

Q. Will you briefly describe for us the physical setup of [40] the plant, whether it is in one building or two buildings, and their relative location to one another, their size, and so forth?

A. There are two buildings, you might call them. Plant 1 had about 14 additions before we built Plant 2, and I don't know how many additions there were on Plant 2, but it is about like a shanty town. We had to keep expanding to meet the war requirements, but for general purposes there are two buildings now. It is all partially consolidated as far as the extensions are concerned.

Q. Are they referred to as two buildings?

A. Yes. We call them Plant 1 and Plant 2.

* * * *

Q. (By Mr. Ryan): For how long a period

(Testimony of James H. Cannon.)

have you been operating with the physical facilities that you now have, that is, Plant 1 and Plant 2?

A. Plant 2, well, I authorized the starting of the construction of that in the latter part of June, 1940. We moved our machinery into the new plant in October, and we moved the office in December of 1940. So it was fully occupied as far as executive action was concerned, by December, 1940. [41]

Q. As I understand it, then, the offices of the organization are in Plant 2, is that correct?

A. General office, yes, for both units. [42]

* * * *

Q. Mr. Cannon, I wonder if you would give us a little clearer picture as to the functioning relationship between the Cannon Manufacturing Corporation and Cannon Electric Development Company.

A. That is one thing that gave me an awful headache because at one time I separated them, which was not realizable on account of the war developments. I had in mind letting the [47] employees participate in the operations, and I knew from my own point of view that if we would come in at the end of the year and say that we had \$150,000.00 development expenses in some ambiguous sink hole out here and take that out of the operating profit, if there was that much left, they wouldn't have any faith in it, so I separated them. I took the designing and creative work and the engineering and the sales contact and advertising from the actual manufacturing which we could pin down to a real basis of fact, and that is where I had in

(Testimony of James H. Cannon.)

mind letting the employees in on the manufacturing, which wouldn't have any ambiguous costs and then they could participate accordingly, but before I could carry out my plans the war hit us. In fact, before the war hit, Lockheed got an order from England for 200 planes, which was the biggest production order we had had yet, and then they started to zoom in, and then the preparedness campaign started, and finally the war itself, and we were just swept off our feet. We made a phenomenal record because we didn't get one cent of federal financing or private bank financing. I have had chances to sell out time and time again and retire, but I have tried to preserve that organization to take care of the employees of the company and keep them together. [48]

* * * *

Q. As I understand it, then, the manufacturing operations are carried on by the Cannon Manufacturing Corporation and the engineering and development, experimentation and so on, that is all carried on by the company?

A. We had a selling unit, and the manufacturing corporation was supported by more than 60 subcontractors during the high pressure period clear to the Atlantic Coast. We make everything that we use with the exception of phenolic moldings, but there was so much that we couldn't do it all ourselves. We have one of the finest tool rooms in the West, but we had to let out dies in the East. We had hard luck there. There was only one of

(Testimony of James H. Cannon.)

them, a company in Chicago, that delivered us anything that was satisfactory, but we had to sublet lots of parts, millions of contacts, and the like. We use our own automatic screw machines largely for making the jobs that the subcontractors don't want, and the limited runs and special items.

Q. Mr. Cannon, in addition to the operations that are carried on by the Cannon Manufacturing Corporation and those that you have enumerated for the Cannon Electric Development Company there is also a selling operation that is carried on [49] by Cannon Electric Development Company, isn't that right?

A. You must not call it selling. We don't do that in view of the Treasury Department. It is engineering contacts. The sales agents work on a strictly commission basis which was passed upon by the Renegotiation Board and they are very essential because they cover the aircraft activities in their area, determine their needs, correct their troubles, and keep in touch with the factory to supply them with services and develop new products to meet the requirements. It is not a selling proposition because you don't have to sell anything.

Q. But I mean, Mr. Cannon, that the actual transaction of the sale is carried on by the Cannon Electric Development Company.

A. All of the sales are by the Cannon Electric Development Company.

Q. And the products which are sold are those

(Testimony of James H. Cannon.)

which are produced by the Cannon Manufacturing Corporation, is that right?

A. The development company for the duration is absorbing everything which Cannon Manufacturing Corporation manufactures, and also everything that the subcontractors make for the manufacturing corporation. [50]

* * * *

Trial Examiner Batten: The subcontractors deal entirely with the corporation?

The Witness: That's right. All the subcontracts are through the corporation. We have a fixed value when the article is completed because the subcontracts, with the exception of the phenolic moldings, are merely a duplication of what we make ourselves, but we have to have more of them.

Q. (By Mr. Ryan): Approximately how many employees do you have in your entire operation of the Cannon Manufacturing Corporation at the present time?

* * * *

A. Our controller broke down in December and was only back a few days in January, and I am drifting along aimlessly, and I myself nearly died in March, operated on in December, and so some of those figures are up in the air. I would say in round numbers we have close to 1500 employees between the two companies.

Q. 1500 employees? [51]

A. We reached 2121 at one time.

Mr. Cannon: I will state to the Examiner and

(Testimony of James H. Cannon.)

Mr. Ryan that we will furnish the information as to that later.

The Witness: I can get them, and when I do we will submit them exactly. Practically all of the people involved here are employees of the corporation.

Q. (By Mr. Ryan): Of the manufacturing corporation?

A. Of the manufacturing corporation, they were employed by the corporation, yes, because there is part of the company employees that are not unionized at all.

Q. Employees of the Cannon Electric Development Company would not be engaged in the production or maintenance work in the plant?

A. No productive work whatsoever.

Trial Examiner Batten: Can you tell us roughly, Mr. Cannon, approximately how many employees there are in the development company, I mean just roughly.

Mr. Wilcox: 1300, approximately.

* * * *

Q. (By Mr. Ryan): Now, Mr. Cannon, you are the active [52] representative of these two companies involved here, the corporation and the development company.

A. President of one and owner of the other.

Q. And you take an active part in the management of those two companies?

A. I designed everything we ever built until we added a few more contacts and plugs and things like that.

(Testimony of James H. Cannon.)

Q. In the handling of the labor relations for the past many years, you have had considerable direct contact with those problems, also?

A. No so much as you might anticipate. I knew much more about the business, because in a one-horse business like mine was, 4000 per cent increase in four years, you are not going to do much contacting anywhere except to try to hold the organization together and keep out of the hands of the investment bankers and the sharks.

Q. During your career as owner and operator of these businesses, when was the first time that a labor organization came into the plant and requested that they be recognized as the representative of any of the employees of Cannon Manufacturing Corporation or Cannon Electric Development Company?

A. At the time they came in, it was all one unit known as Cannon Electric Development Company, which is an incorporated unit, and as near as I could guess at it without referring [53] to the record, it would be about '37.

Q. 1937?

A. Yes, and that was the A. F. of L.

Q. Was that the International Brotherhood of Electrical Workers?

A. That's right.

Q. A. F. of L.?

A. That's right. A. F. of L. had always been friendly to me. We run a jack of all trades shop, and they were trade unions, and we had always had fair consideration from them even with the hard-boiled Electrical bunch that they have got at the

(Testimony of James H. Cannon.)

studios. I was making all of the Electric Products Company spotlights and they compromised for us to make the lamp and the others the socket and they would pass it. They have always played fair with me and they apologized for coming in to organize us. [54]

* * * *

Q. Now, Mr. Cannon, do you recall that in 1937, after the International Brotherhood of Electrical Workers did come into your shop and make claims to represent your employees, that they filed charges against your company with the National Labor Relations Board. A. The Electrical Union?

Mr. Cannon: Was that 1937?

The Witness: No, sir, I don't recall that.

Q. (By Mr. Ryan): The International Brotherhood of Electrical Workers?

A. Well, all I know is that they said they were out there organizing because the C.I.O. was grabbing everything in sight and they were doing it in self defense, and we had a verbal agreement, which was later changed by Washington who [55] insisted on written agreements because there was too much dispute over verbal agreements, and the last I heard of the Electrical Union, Elconin, one of their organizers came around and grinned and said, "I only got six members left paying dues," and the next thing I knew they were all Machinists. I can't recall any correspondence with the Machinists. I used to scrap with their organizer a good deal over the

(Testimony of James H. Cannon.)

desk, but there was no hard feelings. We finally had a written contract with them. [56]

* * * *

Q. (By Mr. Ryan): Mr. Cannon, going now to the year 1938, the International Association of Machinists came into your plant in the year 1938, isn't that right? [58]

A. That's right. All of a sudden, one died out and the other sprung up.

Q. They more or less succeeded the International Brotherhood of Electrical Workers in your plant, is that it?

A. Yes, and some of my oldest employees took very devoutly to the cause there.

* * * *

Mr. Ryan: Mr. Reporter, will you please mark for identification as Board's Exhibit 2 this document? [59]

(The document referred to was marked as Board's Exhibit No. 2, for identification.)

Mr. Ryan: I have had marked for identification Board's Exhibit 2 a letter purportedly on the letter-head stationery of Cannon Electric Development Company, Inc., under date of April 27, 1938, addressed to the International Association of Machinists, Labor Temple, Los Angeles, California, purporting to bear the signature of James H. Cannon, Cannon Electric Company, and I now show it to counsel (handing document to Mr. Cannon.)

Q. (By Mr. Ryan): Mr. Cannon, I show you

(Testimony of James H. Cannon.)

Board's Exhibit 2 for identification and ask you to look it over and tell me whether or not that is a copy of a letter which you addressed to the International Association of Machinists (handing document to witness.) A. It is. [60]

* * * *

Mr. Ryan: Mr. Reporter, will you please mark this document as Board's Exhibit 3-A for identification and this one 3-B for identification?

(The documents referred to were marked as Board's Exhibits Nos. 3-A and 3-B for identification.)

Mr. Ryan: I have had marked for identification as Board's 3-A what purports to be a copy of a letter addressed to Mr. James H. Cannon, President, Cannon Electric Development Company, under date of May 6, 1938, from John Queen, business agent, and I show it to counsel now. I have also [61] had marked as Board's Exhibit 3-B for identification a letter purportedly on the stationery of the Cannon Electric Development Company under date of May 11, 1938, addressed to Mr. John R. Queen, business agent of the International Association of Machinists, purporting to bear the signature of James H. Cannon, and I might say it appears to be a stamped signature of James H. Cannon (handing documents to Mr. Cannon.)

* * * *

Q. (By Mr. Ryan): I now show you Board's Exhibits 3-A and 3-B for identification to you, Mr. Cannon, for your examination, and ask you to look

(Testimony of James H. Cannon.)

at Board's Exhibit 3-A for identification, and will you look at both of them together, it doesn't make any difference. Have you read Exhibit 3-A?

A. I don't have to read the text. That is my signature. I don't question it for a second.

Q. With respect to Board's Exhibit 3-A for identification, that would appear to be a copy of the letter to which you referred in your letter?

A. Exhibit A is dated May 6 and mine is may 11th. [62]

Q. But you refer to a previous letter.

A. Yes, I refer to a previous communication.

Q. It says, "Your favor of May 6."

A. The Board is very cooperative. We couldn't get any more money for our product.

Mr. Ryan: I now offer Board's Exhibit 2 for identification, Board's Exhibit 3-A and 3-B for Trial Examiner Batten: Board's Exhibits 2, 3-A and 3-B respectively.

Trial Examiner Batten: Is there any objection to these?

The Witness: Oh, no.

Mr. Cannon: No.

Trial Examiner Batten: Board's Exhibit 2, 3-A and 3-B will be received.

(The documents heretofore marked as Board's Exhibits Nos. 2, 3-A and 3-B, for identification, were received in evidence.)

[Printer's Note:] Board's Exhibits Nos. 2, 3-A and 3-B are set out in full at pages 636 to 645 of this printed Record.

(Testimony of James H. Cannon.)

* * * *

The Witness: Mr. Examiner, may I ask a question here? I was asked about a meeting with the Labor Board. We never had one that I can recall during the Electrical activities [63] there, but they did have one with the Machinists Union and Queen was rather Irishy, and I used to scrap with him violently, but there was nothing more than over-the-counter about it, although I understand the union threw him out over that.

Trial Examiner Batten: I don't think counsel asked you if you had any meetings with the Board.

The Witness: He wrote an agreement that would have given them the whole thing.

Trial Examiner Batten: I don't know as we are concerned with that.

The Witness: That is what the hearing was for and we agreed to certain things, and then he came back and put in all those old things. We finally signed an agreement and that was what we agreed to, but we did have that one hearing with them and that I recall very distinctly.

Q. (By Mr. Ryan): That is a conference that you are referring to, is it, before the Labor Board?

A. Yes, it was a conference to agree on something. It was not a hearing. [64]

* * * *

Q. Mr. Cannon, can you recall now the term of the agreement that you entered into with the I.A.M. back in 1938?

(Testimony of James H. Cannon.)

A. It was self-continuing from year to year unless we gave 30 days notice. Either party could give 30 days notice.

Q. Was that ever formally cancelled?

A. No. That is one reason why I resented the intrusion out there.

Q. However, the A. F. of L., the I.A.M., did not continue to be active under that contract, is that right?

A. They were active.

Mr. Cannon: Just a minute. I object to that as calling for a conclusion.

Trial Examiner Batten: I think it is a conclusion. What may be active to the witness may not be so to anybody else. [66] I think what we had better do is have the facts as to what was said and done during this period and let me decide whether or not they were active.

Q. (By Mr. Ryan): Mr. Cannon, during the years 1939 and then up through 1940, was there any company of the International Association of Machinists that took up grievances for the employees in your shop regularly?

A. No.

Q. What I mean by "regularly" is from week to week.

A. No. I treated the crew so well that they all quit paying dues.

Q. About when would you say that period began?

A. I knew there were very few left, but I thought there would be a couple of tool makers for

(Testimony of James H. Cannon.)

self-protection. I only got it verbally, but I understood there was practically none paying dues.

Q. When did that information come to your attention, about how long had the contract been in existence when you learned that?

A. Let's see. This was signed in—this was the Machinist contract. The Electrical was about a year earlier, I think. [67]

* * * *

The Witness: This says 1938, and I don't know what date. That was a self-continuing contract unless one or the other served 30 days' notice, but they weren't functioning, and I wanted some representation in the shop, see, for the simple reason that there were abuses down there on the part of some employees making sacred cows out of some. I wanted the employees to take care of themselves on that and iron those things out. [68]

* * * *

Q. (By Mr. Ryan): Mr. Cannon, with respect to the contract entered into with the International Association of Machinists, there was only one contract entered into, isn't that right?

A. As far as I know.

Q. There were no renewals?

A. Because they were self-continuing.

Q. But you stated before it came to your attention that they had all ceased paying dues or had become inactive somewhere along the line after the contract was executed.

A. Yes.

(Testimony of James H. Cannon.)

Q. Could you estimate approximately how long after it was? [69]

A. Oh, there was a gradual tapering off. I had an ambition to build an ideal labor setup. I wanted to create a special shop where we paid a premium wage and where we would pay twice as much and have half the number of employees. It went out of our hands and we couldn't do anything about that, but I did offer a lot of benefits there, like a baby bonus, paying on the installment plan, and I guess we paid for a young army already. We paid \$50.00 each. I guess the treatment I gave them was such that they were wondering what they were paying dues for.

Trial Examiner Batten: Well, Mr. Cannon, the question is if you know approximately the date on which the employees ceased paying dues.

The Witness: No, I have no knowledge. It was tapering off and I didn't know until I was told after the C. E. A. election. I didn't know that except from hearsay.

Q. (By Mr. Ryan): Do you recall along in the early part of 1941 that the United Electrical Radio & Machine Workers of America, C.I.O., started a drive to try to organize in your plant?

A. Very emphatically, yes.

Q. And also an employee organization known as the Cannon Employees Association began organizing around the early part of 1941, do you recall that?

A. The C.I.O. campaign lasted, as nearly as I

(Testimony of James H. Cannon.)

can recall, [70] nearly eight months, while they were serenading in there.

Q. I am talking about when they began organizing.

A. I don't know actually, but the employees got together at the beginning of the C.E.A., I can tell you that. But I couldn't tell you just when it was.

Trial Examiner Batten: Was it in 1941 that the Cannon Employees Association started their activities?

The Witness: Undoubtedly, because we moved completely by December, 1940, and the C.I.O. started in on us just after we had more than doubled our employee roll and took in people, oh, nondescript people from all sources. That is where we made an awful mistake, when we took them in.

Q. (By Mr. Ryan): When you went over to Plant No. 2, when you expanded into the new plant, Plant No. 2, about when was that?

A. The machines were moved in October. We moved them in one night, and in December the shop was moved.

Q. In 1940?

A. In 1940, the shop was started full.

Q. It was within a short time after that that your employee rolls had expanded greatly?

A. I would say we more than doubled in four months.

Q. It was during that great expansion period that this union activity started?

A. I hired them by the color of their eyes, ap-

(Testimony of James H. Cannon.)

parently, [71] and we got the plant full of organizers and our troubles really began then.

Q. Do you recall an organization or committee plan which began coming into existence about the month of May, 1941 known as——

A. Contact Committee?

Q. Contact Committee, yes.

A. I recall that very distinctly because I felt that the A. E. of L. was not functioning and new laws were being passed and I wanted an employer representation, so I advocated their forming committees to make contact with management, people of their own selection, and I was informed later that it was not in compliance with the existing law to do so. I don't know that they ever got very well started before the C.E.A. came in. I think that is evidenced by a letter which I have.

Mr. Ryan: Mr. Reporter, will you mark this document as Board's Exhibit No. 5 for identification?

(The document referred to was marked as Board's Exhibit No. 5 for identification.) [72]

* * * *

Mr. Ryan: Board's Exhibit 5 for identification purports to be a notice to employees of Cannon Electric Development Company and Cannon Manufacturing Corporation from James H. Cannon, dated May 20, 1941. I will show it to you, Mr. Cannon, and I might ask counsel if you are in a position to know that this is a genuine document

(Testimony of James H. Cannon.)

without the witness identifying it. (Handing document to counsel.)

Mr. Cannon: It is one published by him.

Q. (By Mr. Ryan): I will show it to the witness. Those are [73] just copies, Mr. Cannon (handing document to witness.)

A. There is no signature.

Mr. Cannon: On the reverse side there is a signature.

Q. (By Mr. Ryan): On the reverse side (indicating).

A. Yes, we issued quite a group of these things.

Q. This was issued to your employees about the date that the document bears, is that right, May 20, 1941?

A. Well, they were issued over a long period of time. It was made for the purpose of just passing out information from time to time.

Q. I have reference to this particular document that came out.

A. Well, I would have to look at the dates. That is my own handwriting. It is dated May 20, 1941.

Trial Examiner Batten: That would be about the date it was issued, then, is that correct, Mr. Cannon?

The Witness: Yes, that is the date, within a day or so.

Trial Examiner Batten: Approximately?

The Witness: We had to run these through the machine and they might have been delayed 48 hours or something like that.

(Testimony of James H. Cannon.)

Q. (By Mr. Ryan): And copies of that document were issued to the employees and posted on the company's bulletin boards, too, is that right?

A. I don't know about the posting, but we ordinarily passed [74] them—if we had the time card boxes at that time, which I don't recall, we would hand them to them as they went out, and we had a stack of them at the entrance. Some of them would tear them up and throw them in a ditch, and some would take them home.

Mr. Ryan: Mr. Reporter, will you mark this document as Board's Exhibit 6?

(The document referred to was marked as Board's Exhibit No. 6, for identification.) [75]

* * * *

(The document heretofore referred to as Board's Exhibit No. 5, for identification, was received in evidence.)

[Printer's Note:] Board's Exhibit No. 5 is set out in full at page 647 of this printed Record.

Mr. Ryan: I have had marked as Board's Exhibit 6 for identification what reports to be a bulletin to the employees of the Cannon Electric Development Company and Cannon Manufacturing Corporation under date of June 11, 1941, addressed: "Dear folks:" and bearing what appears to be a stamped signature of Mr. James H. Cannon, and I now show it to counsel (handing document to Mr. Cannon).

(Testimony of James H. Cannon.)

The Witness: That might be a mimeograph. It looks like that. The other are multilithed. [76]

Q. (By Mr. Ryan): Mr. Cannon, I show you what has been marked as Board's Exhibit 6 for identification and ask you what that document purports to be (handing document to witness).

A. Yes, without reading the entire text, I would say that is my original all right, on that. That is the Contact Committee which is not functioning.

Q. First of all, Mr. Cannon, was this a bulletin—by "this" I mean Board's Exhibit 6—was this a bulletin which was issued to the employees on or about that date?

A. Yes, it was mimeographed.

Q. And it was delivered to your employees about the time of the date which is on the document, July 11, 1941, is that right? A. Yes.

Mr. Ryan: Mr. Reporter, will you mark this document, please, as Board's Exhibit 7 for identification?

(The document referred to was marked as Board's Exhibit No. 7, for identification.)

Mr. Ryan: I offer this in evidence as Board's Exhibit 6, and there is a copy there. [77]

* * * *

(The document referred to was marked as Board's Exhibit No. 6, and was received in evidence.)

[Printer's Note:] Board's Exhibit No. 6 is set out in full at page 655 of this printed Record.

(Testimony of James H. Cannon.)

Mr. Ryan: I have had marked as Board's Exhibit 7 a document entitled "Plans and Objectives," and I show it to counsel. It has a date of June 3, 1941, on the back (handing document to Mr. Cannon).

Q. (By Mr. Ryan): Mr. Cannon, I show you this document which has been marked for identification as Board's Exhibit 7, and ask you if that is a bulletin, or a copy of a bulletin, which you issued to your employees on or about June 3, 1941 (handing document to witness)?

A. Yes, that is. There is no signature on it, but I don't think there is any question about it.

Mr. Cannon: I can't hear you. Will you keep your voice up?

The Witness: I say there is no signature on it, but I don't question its authenticity with the exception of the marks that have been added.

Q. (By Mr. Ryan): I, of course, am not asking that you [78] acknowledge the red marks and the pencil marks.

A. No, but I would say that is what we issued, because it is made on a multilith and it couldn't be altered without evidence of the alteration. I would say that is authentic, yes.

Mr. Ryan: I offer Board's Exhibit 7 for identification, in evidence as Board's Exhibit 7, and because of the fact that it is marked with pencil, I presume the Trial Examiner will order me to withdraw it and substitute a clean document.

Trial Examiner Batten: I think it would be bet-

(Testimony of James H. Cannon.)

ter, as long as you have to have a copy made, that you have sufficient made, because I prefer to have these without marks on them. I will receive it the same as Board's Exhibits 2 and 3, conditionally, and when the duplicates are offered, I will receive them.

(The document heretofore marked as Board's Exhibit No. 7, for identification, was received in evidence.)

[Printer's Note:] Board's Exhibit No. 7 is set out in full at page 658 of this printed Record.

* * * *

Mr. Ryan: I have had marked for identification as Board's Exhibit 8 a document entitled "Employees" under date [79] of June 8, 1941, and apparently bearing the stamped signature of Mr. James H. Cannon, and I have had marked as Board's Exhibit 9 for identification, a document entitled "Contact Committee Report," under date of June 23, 1941, and on the second page of that document there is apparently what appears to be the stamped signature of James H. Cannon and one of H. L. Caffarel, chairman of the Contact Committee. I will show them to counsel. I might also state with respect to Board's Exhibit 8, for identification, that attached thereto, in addition to being a 2-page document, is a postcard bearing the address and the name of Mr. James H. Cannon, Post Office Box 75, Station A, Los Angeles, California, Mr. Cannon (handing document to Mr. Cannon).

Q. (By Mr. Ryan): I show you Board's Exhibit 8, Mr. Cannon, and ask you whether or not

(Testimony of James H. Cannon.)

that is a document which was issued to the employees with the attached postcard identical to the one that is attached there (handing document to witness.)

A. I would say that was authentic, without reading it clear through. This was an attempted stop gap in the problem we had to face out there with the expanding industry.

Q. I show you Board's Exhibit 9, for identification, and ask you whether or not that 2-page document was issued to the employees and bore your signature and also H. L. Caffarel's signature, stamped signature, under date of June 23, 1941 (handing document to witness). [80]

A. This looks like it has a third page in there that don't connect with the first. This was signed by the employees elected by the group as a whole, thanking them for the appointment, and this one here would appear to be——

Q. The second page?

A. No, this I would say would be a separate—well, I don't know what it is. Let me see.

Q. It would appear to be a joint——

A. There is no second date on it.

Mr. Cannon: So the record will be clear, you are referring to the second page of Exhibit 9 for identification.

The Witness: Caffarel's signature will clear that up. He signed for that group, so that is all right, but it had me puzzled because it had a new heading here and I thought this was some auxiliary

(Testimony of James H. Cannon.)

statement. He is merely thanking the employees for the election of the group which they selected to fulfill the function of a group which we had trying to comply with the rules and regulations.

Q. At the time that thing was issued by him, that letter of thanks, the second page of that document was joined in by you with respect to the management?

A. It is part of it, yes. I didn't read the text there.

Q. And the combined document consisted of 2 pages which was issued to the employees on or about January 23, 1941, isn't that right? [81]

A. And you have a third page on here which is a duplicate.

Q. That is just a copy. A. Yes.

Mr. Ryan: I now offer in evidence Board's Exhibit 9, together with a copy thereof.

Mr. Cannon: Mr. Examiner, I have no objection to its going in now, but I would like to reserve the right on these different exhibits that are now going in and which were in existence prior to the last determination made by the Board, and which I set up in my answer, I would like to reserve a motion to strike at the conclusion of the hearing here.

Trial Examiner Batten: You may reserve that right.

* * * *

(Testimony of James H. Cannon.)

(The document heretofore marked as Board's Exhibit 9, for identification, was received in evidence.) [82]

Q. (By Mr. Ryan): Mr. Cannon, at about the time that this Contact Committee was being formed and the preliminary steps of getting it organized were being taken, do you recall that you received certain communications from the United Electrical Radio & Machine Workers of America about that same period?

A. I know that there was an awful lot of black-guarding bulletins that were issued. I don't recall what correspondence there might have been.

Mr. Ryan: Mr. Reporter, will you please mark this document as Board's Exhibit 10, this as Board's Exhibit 11, and this as 12, and this as 13, all for identification?

(The documents referred to were marked as Board's Exhibits Nos. 10, 11, 12 and 13, for identification.)

Mr. Ryan: I have had marked for identification what purports to be a mimeographed copy of a letter addressed to United Electrical Radio & Machine Workers of America, under date of June 25, 1941, from Cannon Electric Development Company, James H. Cannon, President, as Board's Exhibit 11 for identification; that is, Board's Exhibit 11 for identification purports to be a copy of a letter addressed to Local 1421 of the United Electrical Radio & Machine Workers of America, C.I.O., 5851 Ave-

(Testimony of James H. Cannon.)

lon Boulevard, under date of July 3, 1941, from James H. Cannon.

Board's Exhibit 12 for identification purports to be a [83] copy of a letter addressed to Mr. James H. Cannon, President, Cannon Electric Development Company and Cannon Manufacturing Corporation, under date of July 30, 1941, from William H. Elconin, international field organizer.

Trial Examiner Batten: What date is that?

Mr. Ryan: It is under date of July 30, 1941.

Board's Exhibit 13 for identification purports to be a copy or an original, I believe, of a letter addressed to Mr. William H. Elconin, international field organizer, United Electrical Radio & Machine Workers of America, under date of August 7, 1941, on letterhead stationery of Cannon Electric Development Company, from James H. Cannon, President, Cannon Electric Development Company and Cannon Manufacturing Corporation.

I show all of these documents to counsel (handing documents to Mr. Cannon).

Q. (By Mr. Ryan): Mr. Cannon, I show you what has been marked for identification as Board's Exhibit 10 and what has been marked as Board's Exhibit 11 for identification, Board's Exhibit 12 for identification, and Board's Exhibit 13 for identification, and ask you to examine those (handing documents to witness).

A. That is correct, except for typographical errors which no doubt came about because of our changes in stenographers from time to time, and

(Testimony of James H. Cannon.)

that is occasionally where [84] they sign the name of president under my signature under the Development Company, and when there was no particular import, we let them pass rather than scratch them out.

Trial Examiner Batten: That is a letter that was sent out?

The Witness: Yes, and that is o. k.

Q. (By Mr. Ryan): Was that letter sent to anyone other than to the party to whom it is addressed? Was it, for example, sent to the employees of the company?

A. Undoubtedly, if it is mimeographed. Otherwise, there would be a carbon copy unless something else happened.

Trial Examiner Batten: You will have to speak louder.

The Witness: Being mimeographed, it was undoubtedly sent to the employees, also. Otherwise, it would be a carbon copy.

Q. (By Mr. Ryan): You are referring, of course, to Board's Exhibit 10 for identification, that is the first one you were looking at when you were making the statement.

A. Yes, that is right. That is a duplicate of it there. This is all right. I was replying to the published letter of theirs that they sent out, also, broadcast in their Exhibit 11. [85]

* * * *

The Witness: 10 was possibly a reply to a letter,

(Testimony of James H. Cannon.)

but 11 was in reply to one that may have been a letter supplement.

Q. (By Mr. Ryan): Mr. Cannon, looking at Board's Exhibit 11 for identification——

A. I wouldn't have used a published letter otherwise. That must have been a bulletin distributed.

Q. In addition, it was sent to Local 1421 by you, is that correct, on or about the date it bears?

A. That should be it, yes.

Q. Would you also say that it was distributed to your employees?

A. Undoubtedly, or it wouldn't be mimeographed.

Q. With respect to Board's Exhibit 12 for identification, did you receive the original of that letter from William Elconin of the United Electrical Radio & Machine Workers of America about the date that it bears, July 30, 1941?

A. Undoubtedly, but this letter contained a misstatement of facts.

Trial Examiner Batten: The question is, did you receive the letter, irrespective of the contents? Do you recall receiving it, Mr. Cannon?

The Witness: I wouldn't doubt it, but I don't remember. There was too much detail at that time for me to remember everything. [86]

Q. (By Mr. Ryan): When you read the letter following that, perhaps it will indicate to you—Excuse me a minute. You notice in the letter following that, or at least what purports to be a mimeographed copy of a letter prepared by you, you refer

(Testimony of James H. Cannon.)

to a letter of July 30, 1941, and the previous letter is dated July 30th.

A. That is the reason I didn't question that letter. I undoubtedly had it.

Q. Looking at them both together, is it your recollection now, and I refer now to Board's Exhibits 12 and 13, that you received Board's Exhibit 12 and wrote Board's Exhibit 13?

A. That clears the point. It was themselves that made representation of having a majority——

Trial Examiner Batten: —The question now is——

The Witness: Those letters were the ones.

Trial Examiner Batten: Those are the letters?

The Witness: Yes.

Mr. Ryan: I offer Board's Exhibits 10 through 13 in evidence, and 10 has a copy attached to it. The others do not, but I will get them.

Trial Examiner Batten: 10 will be received as an original and a duplicate. 11, 12 and 13 will be conditionally received upon receipt of the duplicates.

(The documents heretofore marked as Board's Exhibits Nos. 10, 11, 12 and 13, for identification, were received in evidence.) [87]

[Printer's Note:] Board's Exhibits 10 and 11 are set out in full at pages 663 and 665 of this printed Record.

* * * *

Mr. Ryan: Mr. Reporter, will you please mark

(Testimony of James H. Cannon.)

this document for identification as Board's Exhibit No. 15.

(The document referred to was marked as Board's Exhibit No. 15, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 15 for identification what purports to be a bulletin to the employees of Cannon Electric Development Company and Cannon Manufacturing [92] Corporation, bearing what appears to be the stamped signature of James H. Cannon, and which appears to be a mimeographed document.

The Witness: It is multilithed.

Mr. Ryan: Multilithed?

Mr. Cannon: It is undated.

Q. (By Mr. Ryan): Mr. *Ryan*, I show you Board's Exhibit 15 for identification and ask you if that is a bulletin which you issued to your employees?

A. This is one they didn't date, apparently.

Q. I notice that a copy of it, which is attached to it there, and looking at the copy of it now, there appears on the back of it the date of July 8, 1941.

A. I see that date appearing there is written by someone who had the photostate made, apparently because it was not on the original, but I don't know as it would involve anything as far as the authenticity. It is just a matter of time. That is all right. That is my signature.

Q. Was that bulletin by you issued to your employees?

A. Yes, but I can't verify the date. Although it

(Testimony of James H. Cannon.)

is inked in July 8, 1941, that is written by someone else and applying to a portion, apparently.

Q. Apart from that, do you have any recollection as to the approximate time that you issued that to your employees?

A. I would have no way of connecting it in my memory, no, [93] but it is authentic, whenever it was issued.

Q. Would it have been issued sometime, would you say between January, 1941, and January, 1942, would you fix it in that period, as being within that year?

A. That is near enough, I think so, for practical purposes. It was possibly toward the middle of the year sometime, about the date indicated here. I think whoever received that wrote the date on it.

Q. For photostatic purposes?

A. So that would be within a short time of the time they received it. Is this a duplicate?

Q. These are all copies.

A. One is the front and back of the original and the other is a photostat.

Mr. Ryan: I offer Board's Exhibit 15 for identification, in evidence as Board's Exhibit 15. There are several copies attached there. I hope we can find two of them that are unmarked.

Trial Examiner Batten: Mr. Reporter, will you mark this page and the photostat, the photostat as the duplicate, and Board's Exhibit 15 will be received, there being a duplicate there or a photostat.

(Testimony of James H. Cannon.)

(The document heretofore marked as Board's Exhibit No. 15, for identification, was received in evidence.)

[Printer's Note:] Board's Exhibit No. 15 is set out in full at page 667 of this printed Record.

Q. (By Mr. Ryan): Mr. Cannon, in connection with this [94] Contact Committee that we have mentioned heretofore in your testimony, that organization or committee representation plan, whatever you want to call it, I am referring to the employees contact, the Contact Committee was set up in your plant among the employees to be a medium for the handling of problems dealing with the working conditions and grievances of the employees?

A. That would require some explanation in this way. Our crew had enormously expanded and I took the stand that I was not going to import foremen who were skilled, which I could have done in the early part of the game, before Pearl Harbor, because it would break down the morale of my own men, so I employed them as foremen and they multiplied their own incapacity by the number of people working under them, and there were also some personalities involved in the shop and some abuses that were bound to occur, so this was a stop gap to try and give the employees representation. I would like to ask a question of Herb Caffarel, if that committee ever got functioning.

Trial Examiner Batten: The question to you, Mr. Cannon, is who had the committee and what

(Testimony of James H. Cannon.)

was the committee supposed to do? That is the question. What was their purpose?

The Witness: It was supposed to do what the new Labor Act provided in the way of grievance representation and contact with the management. It was principally grievance and [95] any other troubles they might have.

Q. (By Mr. Ryan): Pertaining to working conditions of the employees in the plants?

A. Working conditions and to correct abuses, and we have shown very predominant leadership in ideal surroundings out in our plant. [96]

Trial Examiner Batten: Mr. Cannon, would it be a fair statement to say, generally speaking, the committee was to represent the employees to the management in any matters concerning their working conditions and grievances?

The Witness: That is right, because they were elected by the employees themselves.

Trial Examiner Batten: So would that be a fair statement?

The Witness: Gentlemen, that is all it was supposed to do, and that was something that we needed bad.

* * * *

Q. (By Mr. Ryan): In about September, 1941, an election was held by the National Labor Relations Board among the employees in your plant, is that correct, to determine the bargaining agent?

A. Yes, brought about by an outlaw strike.

(Testimony of James H. Cannon.)

Q. First of all you had a strike, is that it, a week or so before the election? [97]

A. I don't recall the time element, but it was shortly before.

Q. That strike lasted about one day, did it?

A. One shift.

Q. And then an election by the National Labor Relations Board was held with the United Electrical, Radio and Machine Workers on the ballot and Cannon Employees Association on the ballot, is that correct?

A. And no union.

Q. And no union on the ballot?

A. That's right.

Q. There was a choice between the two or no union? A. That's right.

Q. And as a result of the election a majority of the votes were cast for the Employees Association, the Cannon Employees Association?

A. That is right.

Q. Thereafter the company within a matter of a couple of months or so entered into a contract with the Cannon Employees Association, is that right? A. Yes.

Q. Covering hours and wages?

A. I don't recall the exact time element, but as soon as they were certified by the National Labor Relations Board. It was held up for a period. [98]

Q. Yes.

A. Brant agreed that that vote would be final

(Testimony of James H. Cannon.)

and that he appealed it to the courts, and the courts confirmed it, and that we sign a contract.

Q. Anyway, within a matter of a couple of months or so after the election was held, a contractual relationship began between the Cannon Employees Association and the Cannon Manufacturing Corporation, is that right? A. That's right.

Q. And that was a written contract?

A. A written contract.

Q. And that contractual relationship continued, then, thereafter, isn't that right, continuously for succeeding years, I mean from the fall of 1941 through 1942?

A. There were some amendments made from time to time in regard to adjustments, such as wages and the like, and then it was contested by the C.I.O. a second time, which I paid no attention to as purely a scrap between the C.E.A. and the C.I.O., and the C.I.O. got beat worse the second time than they did the first.

Trial Examiner Batten: What do you mean there was a fight, do you mean in court?

The Witness: No.

Trial Examiner Batten: There was another election?

The Witness: The Labor Board authorized another election. [99] That is the reason why I don't know why we are up here. They have done it twice and the courts confirmed it the first time. [100]

* * * *

Trial Examiner Batten: In this first contract,

(Testimony of James H. Cannon.)

was there a closed shop or maintenance of membership, or anything like that?

The Witness: There was a closed shop.

Trial Examiner Batten: Your first contracts with the C.E.A.?

The Witness: Because it was the employees' self-elected government and no funds went outside and the dues were limited to one dollar.

Trial Examiner Batten: But it required that your employees become members of it, is that right?

The Witness: Yes, after a probationary period. As I stated, we did not deduct any dues except where we had individual signatures to do so, and they had to collect anything other than that.

Mr. Ryan: Mr. Reporter, will you please mark this document as Board's Exhibit 17, for identification, and this one as Board's Exhibit 18, for identification.

(Thereupon, the documents referred to were marked Board's Exhibit Nos. 17 and 18, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 17, for identification, what purports to be a copy of a letter addressed [104] to Mr. James H. Cannon, Cannon Electric Development Company, under date of April 24, 1942, from Harry Bridges, Regional Director for the State of California, C.I.O., and as Board's Exhibit 18, for identification. I have had marked what purports to be a letter addressed to Mr. Harry Bridges, Regional Director

(Testimony of James H. Cannon.)

for the State of California, C.I.O., under date of May 8, 1942, from James H. Cannon, President, Cannon Manufacturing Corporation. I show them to counsel.

(Handing documents to Mr. Cannon.)

Q. (By Mr. Ryan): Mr. Cannon, I show you what has been marked Board's Exhibit 17, for identification, and ask you if you can identify that document as a copy of a letter received from Mr. Harry Bridges, of the C.I.O. (handing document to witness.)?

A. What did he enclose there? Have you a record of that? (

Q. No, I have not. I also will submit to you, for your examinaton, Board's Exhibit 18, for identification, to be considered in conjunction therewith (handing document to the witness).

A. Yes, that is undoubtedly my letter, that is the one received from Bridges and this one represents a reply thereto.

Q. In other words, Board's Exhibit 17, for identification, is a copy of a letter you received from Bridges, and Board's Exhibit 18, for identification, is your reply thereto?

A. Yes. I don't personally remember the wording of his [105] letter but I would take that to be the one that I replied to.

Q. And the letter which you sent to him, which is marked Board's Exhibit 18, for identification,

(Testimony of James H. Cannon.)

appears to be one of those—what do you call that process by which you duplicate them?

A. Multilith.

Q. So it is a multilith copy of the letter that you sent to Bridges, is that right? A. Yes.

Q. And the letter was sent to Bridges on or about the date it bears?

A. Yes, that would be within a day or so of the time it went out.

Q. Is it also true that your employees were supplied with copies of the letter?

A. That it right.

Mr. Ryan: I offer Board's Exhibit 17 and 18, for identification, in evidence as Board's Exhibit 17 and 18. [106]

* * * *

(Thereupon, the documents heretofore marked Board's Exhibits Nos. 17 and 18, for identification, were received in evidence.)

[Printer's Note:] Board's Exhibit No. 18 is set out in full at page 671 of this printed Record.

Mr. Ryan: Mr. Reporter, will you please mark these documents as Board's Exhibits 19, 20, 21, 22, and 23, for identification.

(Thereupon, the documents referred to were marked Board's Exhibits Nos. 19, 20, 21, 22 and 23, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 19, for identification, what purports to be a

(Testimony of James H. Cannon.)

copy of a bulletin addressed to the employees of Cannon Electric Development Company and Cannon Manufacturing Corporation under date of May 29, 1942, from Jim Cannon; and as Board's Exhibit 20, for identification, what purports to be a bulletin or message to the employees of Cannon Electric Development Company and Cannon Manufacturing Corporation under date of June 10, 1942, from Jim Cannon—when I say Jim Cannon, I am not speaking familiarly at all, but that is the way it is worded here.

The Witness: That is all right. That is what the gang calls me.

Mr. Ryan: Board's Exhibit 21, for identification, is a bulletin to the employees from Jim Cannon under date of June 19. As Board's Exhibit 22, for identification, I have had marked a bulletin to the employees of Cannon Manufacturing Corporation and Cannon Electric Development Company under date of November 3, 1942, from Jim Cannon—I might say that [108] consists of four bulletins really, there are four pages to it, all issued at the same time. I show these to counsel.

Trial Examiner Batten: What about 23?

Mr. Ryan: Board's Exhibit 23 is also a bulletin addressed to the employees from James H. Cannon under date of November 11, 1942.

(Presenting documents to Mr. Cannon.)

Q. (By Mr. Ryan): Mr. Cannon, I show you what has been marked for identification as Board's Exhibit 20, and ask you whether or not that is a

(Testimony of James H. Cannon.)

bulletin issued to your employees on or about June 10, 1942? A. It is authentic, yes.

Q. It is a document which you issued to your employees on or about that date?

A. Undoubtedly, yes.

Q. I show you Board's Exhibit 19, for identification, and ask you if that is a bulletin, copies of which you issued to your employees, on or about the date it bears, May 29, 1942?

A. Yes, I recall that very distinctly.

Q. And Board's Exhibit 21, for identification, do you identify that as a bulletin which you issued to your employees on or about the date it bears, June 19, 1942? A. Yes.

Q. Board's Exhibit 22, for identification, I show that to you and ask you whether or not that is a bulletin, copies of [109] which were issued to your employees on or about the date the document bears, that is, November 3, 1942 (handing document to witness)? A. Yes, that is mine.

Q. I show you Board's Exhibit 23, for identification, and ask you whether or not copies of that—

A. Pardon me just a second. There is another document here.

Q. With respect to Board's Exhibit 22, it consists of four bulletins—

A. This is a copy of one of those others, isn't it? They are mixed up there.

Q. I should like to point out that Board's Exhibit 22 consists of a bulletin addressed to "Dear Gang" signed Jim Cannon, under date of November 3, 1942, and attached thereto is a bulletin dated May 12, 1942,

(Testimony of James H. Cannon.)

and under the date the words "Reprinted 11/3/42", and also attached thereto is a bulletin dated May 29, 1942, and underneath that date the words "Reprinted 11/3/42", and also attached is a bulletin dated June 19, 1942, and underneath the date the words "Reprinted 11/3/42", so I ask you, Mr. Cannon, if at the time you issued the bulletin dated November 3, 1942, Board's Exhibit 22, for identification, you reissued the bulletins which are attached thereto, reprinted them and reissued them?

A. I undoubtedly did, what that reissue date. I don't recall what the demand was for that. A lot of the employees hadn't received them, apparently, and we made a reissue, and according to the date, I would assume I sent them out with this bulletin.

Trial Examiner Batten: Does the document which is marked Board's Exhibit 22 refer to these other documents?

The Witness: I didn't read the full text.

Trial Examiner Batten: Do you know, Mr. Ryan?

Mr. Ryan: I don't recall offhand, but, as I understand it, they were all issued together.

The Witness: No, I don't think it does, sir. I think these were reissues that were asked for, and I merely attached them to this, which is apparently a self-contained communication. It doesn't refer to the others. That was a fill-in for a shift or something that didn't get them. I cannot say what went with that, but they were issued at the same date, apparently.

Q. (By Mr. Ryan): They were issued on the same date?

(Testimony of James H. Cannon.)

A. Yes. There might have been a day or so difference there.

Mr. Ryan: I offer in evidence Board's Exhibits 19 through 23, for identification, in evidence as Board's Exhibit 19 through 23.

Mr. Cannon: No objection.

* * * *

[111]

Trial Examiner Batten: Board's Exhibits 19 through 23 will be received conditionally, then.

(Thereupon, the documents heretofore marked Board's Exhibits Nos. 19 through 23, for identification, were received in evidence.)

[Printer's Note:] Board's Exhibits Nos. 19, 22, 23 are set out in full at pages 674, 678, 683 of this printed Record.

* * * *

Q. (By Mr. Ryan): Mr. Cannon, after the first contract was entered into with the Cannon Employees' Association and the contract was in effect, it continued in effect, did it not, until some time in the early part of 1943 when a new contract was executed? [112]

A. That contract was rewritten, but as I recall it, the other one had a continuance clause like the A. F. of L. contract, that it carried until it was replaced, or until it was revoked by either party on a thirty-days' notice.

Q. In the fall of 1942, which was about a year after the first National Labor Relations Board election, the C.I.O., United Electrical, Radio and Machine Workers of America, filed a petition again with

(Testimony of James H. Cannon.)

the Labor Board for certification, did it not?

A. That was the election I paid little or no attention to. I heard that it was pending, and I figured it was just a fight between the two organizations.

Q. Well, do you recall, though, Mr. Cannon, that that was a fact, that the petition was filed?

Mr. Cannon: I will so stipulate.

Mr. Ryan: You will so stipulate, Mr. Cannon?

Mr. Cannon: Yes.

Trial Examiner Batten: When was it filed?

Mr. Cannon: The latter part of 1942.

Mr. Ryan: I will give you the exact date. It was filed on September 1, 1942, according to the file.

Mr. Cannon: I will take that statement.

Mr. Ryan: And a hearing was held on that petition within a few months thereafter.

The Witness: The companies had nothing to do with that. [113]

That, as I understand it, was just a dispute between the two unions.

Trial Examiner Batten: The question is, do you know, Mr. Cannon, whether there was a hearing?

The Witness: No, I don't, but I might have been out of the city at the time.

Mr. Ryan: Will you stipulate, counsel, that a hearing was held and that the Board issued a direction of election?

Mr. Cannon: That is in Case No. R-4601?

Mr. Ryan: Yes.

Mr. Cannon: And the statement of the case is dated December 31, 1942.

Mr. Ryan: That is correct.

(Testimony of James H. Cannon.)

Mr. Cannon: I will so stipulate.

Mr. Ryan: And pursuant to that direction of election, an election was held on January 25, 1943. Will you stipulate to that?

Mr. Cannon: January 25, 1943, I will so stipulate.

Mr. Ryan: Between the Cannon Employees' Association and the United Electrical, Radio and Machine Workers, C.I.O., and no union. There was a choice between those two unions and no union, and the majority of votes in that election were cast for the Cannon Employees' Association.

The Witness: Yes.

Mr. Cannon: Yes. I will so stipulate, and stipulate [114] that the supplemental decision and certification of representatives issued in that case, No. R-4601, was dated April 12, 1943.

Mr. Ryan: So stipulated.

Q. (By Mr. Ryan): Now, thereafter, after that second election which we have just mentioned, and the certification which we have just mentioned, also, the company executed another contract with the Cannon Employees' Association, is that correct?

A. The second contract was signed and had some changes.

* * * *

Trial Examiner Batten: Mr. Ryan, in the consent election—if you don't have the information now, we will look it up—in the consent election or the election of January 25th, were objections filed to the election?

Mr. Ryan: Yes.

* * * *

[115]

Q. (By Mr. Ryan): The second contract which

(Testimony of James H. Cannon.)

was entered into with the C.E.A. and your companies, Mr. Cannon, was also a closed shop contract?

A. That's right.

Q. With the check-off of dues, is that correct?

A. Yes.

Q. That contract remained in effect thereafter until how long, do you know, or is it still in effect?

A. I think there was only the two contracts. No, it is not in effect now, because the C.E.A. disincorporated and they are [116] now non-existent.

Q. When did that occur?

A. I would say a couple of weeks before they signed up with the M.E.S.A.

Q. That is the Mechanics Educational Society of America?

A. Yes.

Q. During the time of the Cannon Employees' Association contract, the second contract, during its period you had check-off for the dues, and you turned over the checked off dues?

A. No, sir, not unless we had written authorization.

Q. You turned over such dues as were checked off to the Cannon Employees' Association?

A. Yes, to the C.E.A.

Trial Examiner Batten: Was that a closed shop contract?

The Witness: Yes.

* * * *

[117]

ASA S. WILCOX,

a witness called by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

* * * *

[119]

Q. What is your occupation?

A. Personnel director, Cannon Manufacturing Corporation.

Q. And approximately how long have you held that position? A. Approximately three years.

Q. What, briefly, are some of your duties as personnel director?

A. Supervision of employment, personnel records, handling of labor relations to some degree, grievance committee, and I keep a control over wages, keep control of wages, transfers, promotions, demotions, and so forth. The employee functions, such as, well, services, I should say all employee services. That covers the field generally. Employee services, employment, wage schedules, and labor relations.

Q. Are the employees generally hired through your office, your personnel office? A. Yes.

Q. And when the employment of an employee is terminated, is the termination of such employee handled through your office, too? A. Yes.

* * * *

[120]

Q. Mr. Wilcox, would you briefly outline for us the supervisory system in the plant, beginning with the highest supervision in the plant and going through the various grades until you get to the lowest grade of supervision in the plant?

A. Yes. Speaking for the Manufacturing Corporation, Mr. James H. Cannon is president, Mr.

(Testimony of Asa S. Wilcox.)

Robert Cannon is vice-president and general manager, Mr. Henry Hawkinson is general superintendent.

Q. Is that spelled H-a-w-k-i-n-s-o-n?

A. Yes, H-a-w-k-i-n-s-o-n. Mr. Henry Hintenmeyer is day superintendent and Mr. Edward Bennett is swing-shift superintendent, and Mr. John Hogan is superintendent of Plant 1. The three superintendents, that is, Mr. Hintenmeyer, and Hogan, and Bennett, are under Mr. Hawkinson as general superintendent. [121]

Following them are the general foremen, and then the second and third shift foremen.

Q. How many general foremen do you have?

A. About 20, approximately.

Q. Twenty general foremen. And what is the geographic scope of the area that is supervised by each general foreman?

A. The general foremen, each one has supervisory powers over his one department which he is assigned to. For instance, the assembly department has a general foreman, the finished castings department has a general foreman, and so forth.

Q. I take it when you say there are about 20 general foremen, then that means you have about 20 departments, is that right?

A. Yes, production departments.

Q. Now, the next grade of supervision lower in authority than the general foremen would be what?

A. Leadmen.

Trial Examiner Batten: How about your shift foremen?

(Testimony of Asa S. Wilcox.)

The Witness: The shift foremen—

Trial Examiner Batten: Are they considered to be general foremen?

The Witness: Yes, that's right, they rank under the day shift or so-called general foremen.

Trial Examiner Batten: But you have 20 general foremen. [122] Does that include the shift foremen, the 20?

The Witness: No, it does not.

Trial Examiner Batten: Then, before you get to leadmen, you have shift foremen, don't you?

The Witness: That's right. There are six shift foremen at the present time.

Q. (By Mr. Ryan): Are they lower in the scale of supervisory authority than the general foremen?

A. As far as labor relations, they have practically the same powers as the general foremen, day foremen, yes.

* * * *

[123]

Q. Does each of your departments have approximately the same number of employees?

A. No.

Q. Or are some departments large departments and others small departments?

A. It varies considerably, yes.

Q. What would you say would be the approximate size of the largest department you have?

A. Oh, 150 people.

Q. 150 employees? A. Yes.

Q. What would be the approximate number of employees in the smallest department?

A. Perhaps five.

(Testimony of Asa S. Wilcox.)

Trial Examiner Batten: Pardon me, Mr. Ryan. In these departments where you have leadmen, they work under either the general foreman or the shift foreman, is that it?

The Witness: Yes, sir.

Trial Examiner Batten: Do you have any leadmen in the plant at all who work under the superintendent?

The Witness: No. They wouldn't be called leadmen there.

Trial Examiner Batten: That is, even on your second and third shifts, there is always, is there, a general foreman or [128] a shift foreman present?

The Witness: Either a shift foreman or department head, so-called.

Trial Examiner Batten: What do you mean by a department head?

The Witness: Well, a foreman, if it is the type of department that is not production, or not in the shop, you might call him a department head.

Trial Examiner Batten: You do have some men you call department heads?

The Witness: Yes. They are in the offices or in those departments where we don't function on production.

Trial Examiner Batten: How about your maintenance, is that under a department head?

The Witness: That is a foreman.

Trial Examiner Batten: Are your department heads limited entirely, then, to the office?

The Witness: Almost entirely, yes.

(Testimony of Asa S. Wilcox.)

Trial Examiner Batten: Office and engineering employees?

The Witness: That is right.

* * * *

[129]

Q. (By Mr. Ryan): Mr. Wilcox, prior to the taking over of the position of manager of the cafeteria by Mr. Palsma, there was a man named Cal Cannon who was the manager of the cafeteria?

A. Yes.

Q. When was he manager?

A. He was manager up to January 1, 1945.

Q. How long had he been manager of the cafeteria?

A. He was manager of the cafeteria starting with its inception.

Q. And about when was that?

A. I believe it was in January, 1942, but I am not absolutely sure at the moment.

Q. And that name "Cal" was—

A. His name was really Edward.

Q. Edward C. Cannon? A. Yes.

Q. Do you know whether or not he was a relative of the Cannons who are owners of the company?

A. Well, he was a son of Mr. David H. Cannon.

Mr. Cannon: I will explain that, if you like. Edward C. Cannon is my son, the son of David H. Cannon, and I am a half cousin of James H. Cannon, and a quarter cousin, I guess [140] you would call me, of Robert Cannon.

Q. (By Mr. Ryan): Mr. Wilcox, just where is the cafeteria located in the plant?

(Testimony of Asa S. Wilcox.)

A. The cafeteria is located at the south end of the plant.

Trial Examiner Batten: Plant 1 or Plant 2?

The Witness: It is at the south end of Plant 2. It is in a separate building.

Q. (By Mr. Ryan): It is a separate building?

A. Yes.

Q. But it is right on the property with the second plant, isn't it? A. Yes, it is on the property.

Q. About how far do employees have to go from the main part of Plant 2 to get into the cafeteria?

A. From the end of the plant it is just across the hall, you might say, it is just a few steps.

* * * *

[141]

JAMES H. CANNON,

a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified further as follows:

Direct Examination [147]

* * * *

Q. (By Mr. Ryan): Mr. Cannon, I show you Board's Exhibit 27 for identification and ask you whether or not it was prepared and issued to your employees by you.

A. Yes, that is right; it is undated.

Q. There appears to be no date on it, and I was wondering if you could tell from the contents approximately when you prepared it. [150]

A. I have no way of knowing. Unfortunately, these were written, dated and signed, and they

(Testimony of James H. Cannon.)

omitted the date when they ran them through the machine, when they made the copy of the photographing. That accounts for the off date. They placed my signature on the copy of the photograph after I dictated the letter. We were in a hurry to get them out. I couldn't verify the date on that.

* * * *

Q. For the purpose of this hearing could you tell us now whether or not that was issued sometime during the period from January, 1941, up to the present time, sometime during those years?

A. Oh, yes, it would be in that interval.

Q. It would be in that interval? A. Yes.

Mr. Ryan: I offer Board's Exhibit 27 for identification in evidence. [151]

Trial Examiner Batten: I think they are all right. Board's Exhibit 27 for identification will be received. There is a photostat of it.

(Thereupon, the document heretofore marked as Board's Exhibit 27, for identification, was received in evidence.)

[Printer's Note:] Board's Exhibit No. 27 is set out in full at page 687 of this printed Record.

Q. (By Mr. Ryan): Mr. Cannon, yesterday, if you recall, I believe I asked you about whether or not you had a contract with the I.A.M. in 1938, if you executed one in 1938 some time. I believe you stated that you recalled such. Is that correct?

A. We had a verbal agreement with the Electrical Division in '37, I think it was.

(Testimony of James H. Cannon.)

Q. But the I.A.M., International Association of Machinists, in 1938——

A. I would assume that would be the natural reference to the contract.

Q. With respect to either of those agreements you had with [152] the Electrical Workers, the International Brotherhood of Electrical Workers in 1937, or the International Association of Machinists in 1938, were either of them a closed shop contract?

A. No, not that I recall, because I claimed I would never sign a closed shop contract where there was an outside affiliation.

Q. You mean where the union with whom you were dealing in the shop was affiliated with some parent body outside?

A. Some outside institution that might impose things against the wishes of the union involved.

Mr. Ryan: Miss Reporter, will you please mark this document as Board's Exhibit next in order?

(Thereupon, the document referred to was marked as Board's Exhibit 28, for identification.) [153]

* * * *

Mr. Ryan: I have had marked as Board's Exhibit 28 for identification a document entitled "Agreement," the first paragraph thereof indicating as follows, "This agreement, made and entered into this 24th day of October, 1944, by and between the Cannon Manufacturing Corporation, a corporation, and Cannon Electric Development Company, a sole proprietorship, first party, hereinafter called

(Testimony of James H. Cannon.)

'employer' or 'company'—and the Cannon Employees Association." I will show it to counsel. [154]

* * * *

Q. (By Mr. Ryan): I show you Board's Exhibit 28 and ask you to look at it and tell us if you can whether it is a true and correct copy of the original contract entered into with the Cannon Employees Association and your company?

A. This is, of course, '41. That was more in accordance with my memory, when we were discussing '42 there. I assume this purports to be the first contract.

Q. The first contract.

A. I couldn't verify its contents because the lawyer that wrote it didn't know what was in it in one or two cases and [155] got us into trouble.

Q. From your examination of it, does it appear to be a copy of the original contract?

A. Well, if it was submitted to the Labor Board I would take it it was. Otherwise, I would have some doubt whether it was rewritten and changed before signing. In view of the receiving stamp it would indicate it is an authentic copy.

Trial Examiner Batten: Of course, it would be subject to comparison if you find the signed copy.

Mr. Cannon: Yes. I will stipulate with counsel right now we will endeavor to find it; they will; they will endeavor to find the original and a copy. And if it develops that the original, as signed, is different in any particular from this copy submitted by the C.E.A. the corrections can be made.

(Testimony of James H. Cannon.)

Mr. Ryan: I will agree.

Trial Examiner Batten: You call it to my attention in the record.

Mr. Cannon: Yes, we will do that.

Trial Examiner Batten: Are you offering it, Mr. Ryan?

Mr. Ryan: I offer it in evidence, subject to that.

Trial Examiner Batten: With that understanding it will be received.

(Thereupon, the document heretofore marked as Board's Exhibit 28, for identification, was received in evidence.) [156]

* * * *

Mr. Ryan: I am sorry, I do too have another contract [157] here. Miss Reporter, will you please mark this document as Board's Exhibit next in order?

(Thereupon, the document referred to was marked as Board's Exhibit 29, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 29 for identification what purports to be an agreement between Cannon Manufacturing Corporation and Cannon Electric Development Company and the Cannon Employees' Association, effective date May 5, 1943. The document is in booklet form.

Mr. Cannon: No objection.

Mr. Ryan: Can we stipulate, I wonder, that this is the second contract which was executed?

(Testimony of James H. Cannon.)

Mr. Cannon: We will so stipulate. That is correct, isn't it, Mr. Wilcox?

Mr. Wilcox: Yes.

Mr. Ryan: In view of that stipulation I offer the document in evidence as Board's Exhibit 29.

* * * *

Trial Examiner Batten: If you want to keep it in your file, Mr. Wilcox has an extra one. The exhibit will be received in evidence.

(Thereupon, the document heretofore marked as Board's Exhibit 29, for identification, was received in evidence.) [159]

* * * *

ALVIN L. GEORGE,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * *

Q. Were you ever employed by Cannon Manufacturing Corporation? A. I was. [167]

Q. Or Cannon Electric Development Company?

Trial Examiner Batten: Just a moment. What did you say your middle initial is?

The Witness: L.

Trial Examiner Batten: I notice in the complaint it is simply listed as Alvin George. I don't assume there is any objection to amending the complaint to read Alvin L. George?

Mr. Cannon: No.

(Testimony of Alvin L. George.)

Q. (By Mr. Ryan): When did you begin work for that organization?

A. I believe it was March of 1938.

Mr. Cannon: May I have him say which one he was working for?

Trial Examiner Batten: Yes.

Q. (By Mr. Ryan): Do you understand which one you were working for?

A. Well, I began working for the Cannon Electrical Development Company, I suppose. I ended up working for the Corporation. I never knew when the change was made. [168]

* * * *

Trial Examiner Batten: Well, I think it is rather clear the witness doesn't know.

The Witness: When we went into the new building it was the Manufacturing Corporation.

Q. (By Mr. Ryan): What plant did you work in?

The Witness: I worked in both plants, No. 1 and No. 2.

Q. Did you work in them interchangeably and then were transferred from one to the other?

A. I worked in one a while and when the new building was put up we moved over.

Q. Then you moved over? A. Yes.

Q. Did you state when you began working for the company?

A. March, '38, I think it was. [169]

Q. In what capacity were you first employed?

A. I was employed as a carpenter's helper.

(Testimony of Alvin L. George.)

Q. Where did you perform your work as a carpenter's helper?

A. Well, at that particular time Mr. Cannon was building a boat and I was employed to help the carpenter build the boat.

Q. Was that built there at the plant?

A. Yes, right at the plant.

Q. Plant 1 or plant 2?

A. Plant 1. There was no plant 2 at that time.

Q. How long did you continue in the job as carpenter's helper, approximately?

A. Well, I suppose I was a carpenter's helper for about six weeks, and then I did the carpenter work myself. The carpenter was released and I did the work from then on.

Trial Examiner Batten: Did your pay change or did you receive the same pay?

The Witness: I received the same pay.

Trial Examiner Batten: Were you hired as a carpenter's helper?

The Witness: That is right.

Trial Examiner Batten: And then you continued as a carpenter's helper and received the same pay until what time? I presume that is the question.

The Witness: Well, I was never notified I was reclassified or anything else, other than carpenter's helper, [170] when I went on machines a year later.

Q. (By Mr. Ryan): While you were doing this carpenter work, who was your superior?

A. Mr. Raymond Cromwell.

Q. Raymond Cromwell? A. That is right.

(Testimony of Alvin L. George.)

Q. What was his title?

A. Well, when I first went to work he was working in the stock room, and then about a month or six weeks later he was made plant superintendent.

Trial Examiner Batten: What was his name?

The Witness: Raymond Cromwell.

Q. (By Mr. Ryan): Now, after you had been working at carpenter work for about six weeks, what happened?

A. I was put inside the plant to work under Cromwell directly.

Q. Which plant were you put inside of?

A. No. 1.

Q. Plant 1? A. Yes.

Q. At that time plant 2 had not yet begun to function; is that right? A. No.

Q. What duties were you assigned to in the plant when you were transferred? [171]

A. I was doing carpenter work directly under Cromwell.

Q. How long did you continue on that job?

A. I would say for approximately a year or a year and a half.

Q. Now, at the time you were transferred into the shop to work inside, did that coincide with Mr. Cromwell's taking over the job of plant superintendent?

A. Yes, we went in both together, both the same day.

Q. While you were in the shop, was Cromwell your superintendent?

(Testimony of Alvin L. George.)

A. That is right. I worked directly under him.

Q. Did you take your orders directly from Mr. Cromwell? A. That is right.

Q. Now, while you were there and during the early part of your employment with the company, did the International Association of Machinists do any organizing among the employees, to your knowledge?

A. Yes, they were organizing when I first went to work there.

Q. The early part of 1938? A. Yes, sir.

Q. Now, did you have a conversation with Mr. Cromwell shortly after you had gone to work inside the shop relative to the organizational efforts of the A.F.L.?

Mr. Cannon: I object to that as calling for hearsay.

Trial Examiner Batten: You may tell us. The question is did you have a conversation with him.

The Witness: I had a conversation with him, yes, about a meeting.

Q. (By Mr. Ryan): Can you tell us approximately how long you had been working inside in the plant at the time of that conversation with Cromwell?

A. It must have been during the first three months I was inside the plant.

* * * *

Q. (By Mr. Ryan): Where did the conversation take place?

A. Well, I was working in the sheet metal de-

(Testimony of Alvin L. George.)

partment at that time. There wasn't anyone that was working in that department. We worked in and out whenever we needed sheet metals. And Mr. Cromwell came over to me one day and asked me—

Mr. Cannon: May I have a running objection to this being hearsay?

Trial Examiner Batten: Yes, you may.

Q. (By Mr. Ryan): When Mr. Cromwell came over to you on that occasion, was anyone else present? A. No.

Q. Just you and he? [173] A. Yes.

Q. Will you relate the conversation?

A. He asked me if I was going to the union meeting that night. I told him no, that I didn't care anything about it.

He asked me to go, he said I ought to go and find out what was going on, get in with the rest of the boys.

Q. Did you go to the meeting that night?

A. I did.

Q. Where did it take place?

A. At the Labor Temple, A.F.L. Labor Temple.

Q. Were there other employees of the company that you recognized at that meeting?

A. Oh, yes, there was practically the whole shop.

Trial Examiner Batten: Well, now, just a moment. You say practically the whole shop.

The Witness: I mean the employees.

Trial Examiner Batten: Can you give us some idea of the number?

The Witness: I would say there was around 25 or 30.

(Testimony of Alvin L. George.)

Q. (By Mr. Ryan): At that time the number of employees which the company had was considerably smaller, wasn't it, than it is now?

A. At that time I was No. 39. I think I was No. 39 employee.

Q. About how many employees were there altogether?

A. Around 40, something like that. [174]

Q. Now, the day after that meeting were you at work? A. Yes, I was at work the next day.

Q. Did you have another conversation with Mr. Cromwell?

A. Yes. This time it took place in the stock room where I was building a bench.

Mr. Cannon: May I likewise have an objection to all this, as being hearsay?

Trial Examiner Batten: Yes.

Q. (By Mr. Ryan): Did Mr. Cromwell come up to you while you were working?

A. Yes, he did.

Q. Who else was present, if anyone, during that conversation? A. No one.

Q. Will you tell us what the conversation was?

A. He asked me if I attended the meeting the night before. I told him I had.

He asked me how many were there. I told him approximately how many were there. Who was the leader of it, who did all the talking, what they did, what business they had taken up.

Trial Examiner Batten: He asked you that. What did you tell him?

(Testimony of Alvin L. George.)

The Witness: I told him as near as I could tell him exactly what went on. [175]

Q. (By Mr. Ryan): Tell us what you said to him, as best you can recollect.

Trial Examiner Batten: What did you tell him?

The Witness: He asked me who did most of the talking. I told him Mr. Boswick was the one that did most of the talking.

Q. (By Mr. Ryan): Can you tell us now who Mr. Boswick was?

A. At that time he was a machinist, running a turret lathe.

Q. At the plant? A. At the plant.

Q. Cannon plant? A. Yes.

Q. What else did you say to Mr. Cromwell on that occasion, as best you can recall?

A. Well, I don't exactly recall all the conversation. That is part of it. It became apparent to me—I mean I could tell——

Mr. Cannon: I object to that as being his conclusion, it became apparent.

Trial Examiner Batten: I think when a witness starts out that way it is evident it is a conclusion.

Tell us, as near as you can remember, what you told Mr. Cromwell that went on at the meeting.

The Witness: Well, I have just about told that. I told [176] him how many were there and who did the talking. I don't remember exactly the business that was taken care of now, it is too long.

Q. (By Mr. Ryan): Did you thereafter attend any further A.F.L. meetings? A. No.

(Testimony of Alvin L. George.)

Q. That was the only one?

A. That was the only one I ever attended.

Q. Now, thereafter did union activities of the A.F.L. continue for any length of time?

* * * *

The Witness: It continued for a short while after that. Then there was a lay-off, in which most of the active [177] members were laid off.

Mr. Cannon: I move to strike that as a conclusion.

Trial Examiner Batten: The last phrase may be stricken, in which the active members were laid off.

Q. (By Mr. Ryan): How long did you continue to work directly under Cromwell, Mr. George, approximately how long?

A. Oh, I should say about a year and a half.

Q. A year and a half? A. Yes.

Q. Did you continue the carpenter work?

A. That is right.

Q. Now, early in 1941 did you have occasion to learn of any other union beginning some activity in the plant of Cannon?

A. Well, early in 1941 was the beginning of the United Electrical, Radio and Machine Workers organizing campaign, as I recall it.

Q. C.I.O. organization? A. That is right.

Q. When did this first come to your attention? I mean how did it come to your attention?

A. The first I had any knowledge of it was when one evening when I quit work I came outside

(Testimony of Alvin L. George.)

and a C.I.O. sound truck was there. At that time the organizer was William Elconin.

Trial Examiner Batten: How do you spell that?

Mr. Ryan: I think it is E-l-c-o-n-i-n.

Miss Dunks: That is right.

Q. (By Mr. Ryan): Was someone speaking over the loud speaker? A. This Elconin, yes.

Q. Was it out in front of the plant entrance, the truck? A. It was.

Q. Now, the next day when you reported for work did you have occasion to observe one Ned Mandella in the plant? A. I did.

Q. Who was Ned Mandella at that time?

A. Ned Mandella at that time was the stock room attendant.

Q. What was this stock room, by the way?

A. I should have said tool crib attendant. He took care of the tools in the tool crib. If anyone needed tools they went to the crib and he attended to them.

Q. Did you go to the crib that morning for any reason?

A. I did. I usually went four or five times a day to the crib for different tools. That particular morning I went for a tool of some kind.

Q. Did you have a conversation with Mr. Mandella on that occasion?

A. Yes, he approached me——

Mr. Cannon: May I have a running objection to this, as being hearsay? [179]

Trial Examiner Batten: Yes.

(Testimony of Alvin L. George.)

Q. (By Mr. Ryan): Was anyone present besides yourself and Mr. Mandella?

A. Him and I.

Q. About what time of day was it?

A. It was pretty early in the morning, I would say about 8:30 or 9:00 o'clock.

Q. Now, will you tell us what was said during that conversation?

A. He approached me with a petition which said to keep out the C.I.O., and I noticed there were a number of names already signed. And he asked me to sign it. I told him that I wouldn't, and he would get himself in trouble.

Q. Was anything further said?

A. Well, there was later that afternoon, he asked me to sign again but he had changed the heading of it; he had erased it out.

Q. Was this another occasion on the same day?

A. This was another occasion on the same day.

Q. When did that take place?

A. That was later in the afternoon.

Q. Where did it take place?

A. The same place, tool crib.

Q. You had gone back to the tool crib again?

A. Yes. [180]

Q. Was anyone present on that occasion?

A. None.

Q. Did you have a conversation then with him?

A. Not particularly that afternoon. I had numerous occasions on other days following that.

(Testimony of Alvin L. George.)

Q. Did you observe he still had a petition out there? A. Oh, yes, he kept that.

Q. Did you look at the petition in the afternoon, also? A. I did.

Q. But did you sign it or not sign it?

A. I didn't sign it.

Q. Thereafter, a day or so after that, did he talk to you again about it?

A. Yes, he approached me practically——

Mr. Cannon: I think I can save a lot of time. May I have an understanding with the hearing officer and also with Mr. Ryan that I have a running objection to these conversations had with Mr. Mandella out of the presence of the management as being hearsay and not binding upon the management?

Trial Examiner Batten: Yes, you may have an objection. Of course, it is pretty difficult to tell at the beginning the tie-in of the testimony, so I am receiving it assuming that some relationship to the management will be shown. Of course, if the Board rests its case and there is no showing in the evidence that this was in any way tied up or connected [181] with the management or the circumstances were such that the management should have known of it, it has no value as far as its relationship to the issues here is concerned.

Mr. Cannon: I appreciate that. I just want to be sure of the objection, because it wouldn't be competent, of course, unless they did show what you

(Testimony of Alvin L. George.)

have suggested. Therefore, I want the objection. I will make it each time if you require me to do it.

Trial Examiner Batten: No, you may have a continuing objection.

Mr. Cannon: Thank you.

Q. (By Mr. Ryan): Did you, within a day or so later, have another conversation with Mandella?

A. Yes. I told him on one of the occasions he would get himself in trouble with the company, trying to get a petition like that signed on company time. He told me he had it pretty direct from the company it was all right for him to go——

Mr. Cannon: I make particular objection to that, and move to strike it out on two grounds. In the first place, it is hearsay. In the second place, it is a self-serving declaration. In the third place, you could not prove agency by the declaration of an agent.

Trial Examiner Batten: It may stand. As it now stands it doesn't bind the company. I mean any employee could make [182] that statement.

Q. (By Mr. Ryan): Mr. George, about within a week or on or about a week later from the time you first had your contact with Mandella, that you have testified about in this connection, did you have a conversation with Mr. Ray Cromwell, the superintendent of the company? A. I did.

Q. Will you explain how you happened to have a conversation with him?

A. Yes. He called me into his office, as I was

(Testimony of Alvin L. George.)

passing by, getting a drink of water or something, I don't know what reason.

Q. In his office? A. Yes.

Q. Where was his office located with respect to this tool crib that Mandella worked in, about how far?

A. They were all in the machine department.

Q. The tool crib and Mandella's office?

A. Yes, and Cromwell's office.

Q. Cromwell's office?

A. Yes. I should say about 50 feet apart, maybe.

Q. Just how were you called in? How did you receive the message to go into Cromwell's office?

A. He had an open glass office, you know, the glass in the front. As I was passing by he motioned for me to come in. [183]

Q. When you went in, was anyone else present there besides you and Mr. Cromwell, that you recall?

A. There was no one present there when we had the conversation, no.

Q. Will you relate the conversation?

A. He asked me why I didn't join up with the organization they were forming. I told him I didn't want to have anything to do with anything Mandella was handling. Besides I didn't want to get myself in trouble with the company.

So he told me that that was all right, the company knew about what he was doing.

Mr. Cannon: I make the same specific objection to that as I did to the other conversation, the declarations of Mandella as to the company's knowl-

(Testimony of Alvin L. George.)

edge, and move to strike it on the three grounds heretofore mentioned.

Trial Examiner Batten: I make the same ruling. It may stand.

Q. (By Mr. Ryan): Will you proceed with your relation of the conversation, Mr. George?

A. He told me it was to be a company union and that he would go see that the right men got the right jobs in it, they would be given the proper training. He asked me to join up.

Q. Have you related all of the conversation?

A. No. I told him I would rather have time to think it [184] over, I didn't want to go sign up with something I didn't know what it was.

Q. Is that all you can remember now? Have you related all the conversation?

A. That is all I can remember at this time.

Trial Examiner Batten: When you told him you wanted time to think it over, did he say anything in reply to that? A. He said, "All right."

Mr. Cannon: May I have a date fixed on that conversation, Mr. Ryan?

Q. (By Mr. Ryan): About how long ago was it?

A. I would say that was in the first couple of weeks, anyway, after the C.I.O. sound truck was there. I don't remember exactly what date that was, early part of 1941.

Q. Would you place it in January?

A. I would prefer not to say. It has been quite a while ago.

(Testimony of Alvin L. George.)

Q. Now, thereafter did you see Mandella again?

A. Quite often, he asked me quite often to join up again after that. He also promised me any office in the organization I wanted outside of president, which he was supposed to hold.

Q. About how long was it after you had talked to Cromwell, this conversation you have related with Cromwell, was it that you again talked to Mandella, when he mentioned about you having an office in his organization?

A. Oh, I would say the next day or two at the latest. [185]

Q. Did that conversation take place at the tool crib?
A. At the tool crib.

Q. Was anyone present during the conversation besides you and Mr. Mandella?

A. No. You usually went up to the tool crib and got your tools, and that was all.

Q. Were you there getting your tools on that occasion?
A. That is right.

Q. Will you relate now the conversation that took place on that occasion?

Mr. Cannon: With Mandella?

Mr. Ryan: Yes.

The Witness: Well, he asked me to sign up again. I told him no. I didn't want to make him mad and I didn't want to get myself in Dutch by not signing. Yet, I didn't want to, see. So he offered me any office if I wanted one, if I signed up.

Q. (By Mr. Ryan): What did he say in that connection?

(Testimony of Alvin L. George.)

A. He said that he could give me any job I wanted, any office, if I would just sign up, outside of president.

Q. Did you make any reply to that?

A. Well, I don't know exactly what my remark was; I stalled him again.

Q. You still didn't sign up?

A. I still didn't sign up. [186]

Q. Now, did you shortly thereafter have some deal with Mandella about a portable address system? A. I did.

Q. About how long was that after you had conversed with Mr. Cromwell, can you fix it?

A. Some time within a month, I would say, probably.

Mr. Cannon: Within a month?

The Witness: Probably within a month. It might have been more or a little less. He was telling me one day about how the C.I.O. was getting a jump on him.

* * * *

Q. (By Mr. Ryan): Are you relating the conversation with Mandella?

A. Yes. We had conversations all the time. He was continuously approaching me about joining the organization.

Trial Examiner Batten: We are trying to get this conversation which you say occurred about a month after the Cromwell conversation.

The Witness: Yes.

(Testimony of Alvin L. George.)

Q. (By Mr. Ryan): Was this conversation at the tool crib?

A. No, this conversation was held at my machine, I believe, the best I can remember.

Q. Was anyone present besides you and Mr. Mandella? [187]

A. I don't really remember whether there was anyone there or not.

Q. Will you relate the conversation?

A. He was telling me about—I asked him how his organization was getting along. He was telling me about the sound truck the C.I.O. had which caused him a lot of trouble. So I asked him, “Well, why don't you buy yourself some sound equipment?”

He said, “Well, he had been thinking about it.” I happened to have a portable sound outfit at home I had bought. I sold that to him. The transaction took all day. He had to see the rest of the board, or whatever they had, a secretary. By that time they had established officers.

Q. When you say “they,” do you mean Mandella and his organization he had been talking to you about? A. That is right.

Q. Now, before that day, before your day's work was up that day, did you have any further conversation with Mandella about the address system, portable address system?

A. It took all day to make the transaction. I remember I got paid in the afternoon.

Q. How did you receive your pay for that deal?

(Testimony of Alvin L. George.)

A. By check.

Q. Where did you receive the pay check for that portable address system? [188]

A. He gave it to me just before I went home.

Q. Where were you when you received it?

A. At work.

Q. At your machine? A. Yes.

Q. Did he bring it into your department while you were working?

A. I don't recall whether he brought it over to my department or not, or whether I saw him some place in the plant and he gave it to me. Could I say something?

Q. Yes.

A. I don't know whether this date is accurate. I mean it was some time during the first part of the organizing campaign.

Q. You mean you don't know exactly whether it was a month after you talked to Cromwell or not?

A. That is right. I know it was after I talked to him. I don't know just how soon.

Trial Examiner Batten: How much did he pay you for it?

The Witness: How much he paid me?

Trial Examiner Batten: Yes.

The Witness: \$12.50.

Q. (By Mr. Ryan): \$12.50? A. Yes.

Trial Examiner Batten: What did he give you, a personal check? [189]

The Witness: He gave me a check on the organization, as I recall.

(Testimony of Alvin L. George.)

Trial Examiner Batten: Did the organization have a name?

The Witness: It had by that time, but I don't remember whether it was Cannon Athletic Association, or something like that.

Q. (By Mr. Ryan): If you heard it would you know?

A. Well, they changed, got so many names there it is impossible to tell you exactly what name was the prevailing one.

Q. Well, do you recall now whether it was Cannon Recreation Association?

A. It seems as though that sounds like the name.

Mr. Cannon: Cannon Recreation Association?

The Witness: Yes.

Q. (By Mr. Ryan): This is at the early beginning I am talking about now, of the early months of the organization. A. Yes.

Mr. Cannon: We were talking about the check, I thought.

Mr. Ryan: I am trying to find out what organization he got the check from.

Q. (By Mr. Ryan): Was the check signed by some individual? It must have been.

A. Yes, it was signed by the secretary. I believe it was the secretary, Andy Bereznak.

Q. Now, thereafter did you join any organization about that [190] time that you were being approached by Mandella, and within the succeeding weeks?

A. Later on I joined the C.I.O.

(Testimony of Alvin L. George.)

Q. About when was it that you joined the C.I.O.?

A. Well, I would say around April or May, some place up in there.

Q. 1941? A. Yes.

Q. Did you sign a C.I.O. card? A. I did.

Trial Examiner Batten: I presume when you say the C.I.O. you mean the United Electrical Workers?

The Witness: Yes.

Trial Examiner Batten: In other words, that is the organization you signed the card for; is that right?

The Witness: That is the one.

Q. (By Mr. Ryan): And did you wear your union button, your C.I.O. button while you were working? A. Yes, I wore it.

Q. While you were working in the plant?

A. That is right.

Q. Now, within a day or so after you had signed up with the C.I.O. and began wearing your button in the plant, did you have a conversation with Mr. Cromwell again, Superintendent Cromwell? [191]

A. I did. I think it was about—if I remember, I signed up on a Thursday, and I had a conversation with him the following Sunday, because I worked a lot of overtime under him.

Q. You say you signed up on Thursday. You have reference to your signing up with the United Electrical, Radio and Machine Workers, C.I.O.?

A. Yes.

(Testimony of Alvin L. George.)

Q. Where did this conversation with Cromwell take place?

A. This was in the new plant we are in now. It took place in the new plant. Well, it was no department, it was a hallway where we were building—covering the sides of this hallway with plywood.

Q. What department would that hallway be near?

A. It would be near what is known as the die casting department now.

Q. Can you tell us how you and Mr. Cromwell happened to be at that particular spot on that occasion?

A. Well, it was Sunday and we were working overtime, and he came down to me and asked me if I had joined the C.I.O. He had heard I had joined and he wanted to know if it was true. I said yes. He got very mad. He mumbled something and walked off. I don't know what it was.

Q. Now, did the C.I.O., the United Electrical, Radio and Machine Workers, have you make a speech on the radio? [192] A. I did.

Q. I ask you if that was made some time about August of 1941?

A. Yes, I think it was August of 1941.

Mr. Ryan: Miss Reporter, will you please mark this document as Board's exhibit next in order?

(The document referred to was marked as Board's Exhibit 30, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 34 for identification a document dated August

(Testimony of Alvin L. George.)

26, 1941, with the words at the top, "Our Daily Bread." I show it to counsel.

Q. (By Mr. Ryan): Mr. George, I show you Board's Exhibit 30 for identification and ask you to tell us, if you can, whether that is a transcript of what was given on the radio at the time you appeared on the radio? A. I think this is it.

Trial Examiner Batten: You mean this is the speech you read over the radio?

The Witness: Yes.

Q. (By Mr. Ryan): It appears to be a dialogue between you and other persons. Is that true?

A. Yes, there were three persons.

Q. Three persons were there. Is one person named Jensen? A. Ivan Jensen.

Q. Who was Ivan Jensen? [193]

A. He worked with me at the plant.

Q. At the Cannon plant? A. Yes.

Q. Was he a C.I.O. man, also?

A. He was.

Q. The initials J. J., appearing throughout this transcript, tell us whose those initials refer to.

A. Johnny Johnson, the announcer.

Trial Examiner Batten: He was not an employee; was he?

The Witness: No, he was not.

Q. (By Mr. Ryan): Johnny Johnson. This program, by the way, "Our Daily Bread," is a C.I.O. program; is it? A. It is.

Q. It is broadcast at a certain hour of the day over the radio almost every week day; is that right?

(Testimony of Alvin L. George.)

A. Yes, it is.

Trial Examiner Batten: Do you mean that this witness participated in this every day?

Mr. Ryan: No, I don't mean he did. I mean the program "Our Daily Bread."

Q. (By Mr. Ryan): That transcript, which you have identified now, was the particular broadcast of "Our Daily Bread" on August 26, 1941; is that right? A. That is right.

Trial Examiner Batten: Was it over a loud speaker? [194]

The Witness: A radio station.

Trial Examiner Batten: What station?

The Witness: K.R.K.D. at that time.

Trial Examiner Batten: That is a Los Angeles station?

The Witness: Yes. May I correct that? That is KHOX, but we used KRKD studios.

Q. (By Mr. Ryan): Now, within two or three days after you had taken part in that program that is reflected in Board's Exhibit 30 for identification, did you have a conversation with Mr. Cromwell, Ray Cromwell, the superintendent, at the company?

A. I had a short conversation with him a couple of days later when he fired me.

Q. Will you tell us how you happened to come in contact with Mr. Cromwell a couple of days after you had participated in the broadcast?

A. We had worked a couple of days or so, and I think—and Mr. Jensen, who worked with me, was

(Testimony of Alvin L. George.)

called into the office. When he came back out he told me they had fired him. [195]

* * * *

Q. (By Mr. Ryan): Is Jensen the same man that appears to have taken part in that broadcast?

A. He is.

Q. After he had come out and said what you say he said, were you called in?

A. I was called in.

Q. Will you tell us how you were called into Cromwell's office on that occasion?

A. The fellow that worked in the office—I can't think of his name—came out and told me Mr. Cromwell wanted to see me. So I went in and he gave me my check and told me I was being fired. [196]

I asked him what for. He said, "For making the radio broadcast." That was all the conversation. I walked out.

Q. About what time of day was that?

A. It must have been about 2:00 o'clock in the afternoon.

Q. When you went in to talk to Mr. Cromwell on that occasion, and during his statements to you, was anyone present, other than Mr. Cromwell and yourself, that you can recall?

A. I don't recall whether the fellow that worked in the office—his name is Howard—whether he stayed in there or not. He was usually told to leave whenever I was talking to Mr. Cromwell.

Q. You don't recall whether he was there or was not there at that particular time?

(Testimony of Alvin L. George.)

A. I don't recall if he was there.

Trial Examiner Batten: Was there any further conversation at that time?

The Witness: No.

Trial Examiner Batten: Did you say anything?

The Witness: No. There wasn't anything left for me to say.

Trial Examiner Batten: I didn't ask you that. My question was did you say anything?

The Witness: No; I went out.

Q. (By Mr. Ryan): As I understood, you asked him as to why you were being fired? [197]

A. I asked him why I was being fired. He said, "For making the broadcast."

Q. Did you then leave Cromwell's office?

A. I did.

Q. What did you do?

A. I got my tools and went out of the plant.

Q. What did you next do after you got out of the plant, did you do anything about this termination with the company?

A. Well, we told the organizer of the C.I.O., Carl Brant.

Q. Who told him?

A. I myself told him, Ivan Jensen, and I think the other fellow was Clarence Wiley.

Mr. Cannon: May I have a running objection to the conversation had with Mr. Brant, in the absence of the company officials?

Trial Examiner Batten: Yes. Were all three of you there together talking to Mr. Brant?

(Testimony of Alvin L. George.)

The Witness: We were all there the next morning at the lawyer's office. I don't know whether all of us were out there that afternoon when we were talking to Mr. Brant.

Trial Examiner Batten: Were you all three there together?

The Witness: Yes, in the afternoon.

Trial Examiner Batten: You talked to Mr. Brant?

The Witness: Yes, He came out for the afternoon shift that was going to work. [198]

Trial Examiner Batten: Tell us what you told him.

The Witness: We told him we had been fired. That is about all the conversation there was, outside of we should go to the lawyer's office in the morning to see what should be done about it.

Q. (By Mr. Ryan): The next morning did you go to a lawyer's office? A. We did.

Q. What office did you go to?

A. Al Wirin, Gallagher & Wirin.

Q. They are local attorneys here in Los Angeles?

A. That is right.

Q. Who went to the lawyers on that occasion, besides yourself? Who were the other people that went with you, Mr. George?

A. Ivan Jensen, Clarence Wiley, a fellow by the name of Martin.

Mr. Cannon: Martin?

The Witness: Yes.

Q. (By Mr. Ryan): Was Mr. Wiley an employee

(Testimony of Alvin L. George.)

of the company during the time you were employed there? A. He was.

* * * *

[199]

Q. (By Mr. Ryan): Mr. George, did the C.I.O. call a meeting, to your knowledge, regarding your termination with the company?

A. They did. I think it was Sunday.

Q. Sunday following your discharge?

A. Following the discharge.

Q. (By Mr. Cromwell): Where did that meeting take place?

A. It took place at the C.I.O. Building, 5851 Avalon Boulevard.

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[201]

Q. (By Mr. Ryan): Was there a meeting and strike vote taken? A. There was.

Q. Did a strike take place at the plant of Cannon a day or so after the meeting?

A. The first day after Labor Day.

Q. Was a picket line established by the United Electrical, [202] Radio and Machine Workers at the plant? A. There was.

Q. During the conduct of that strike and picket line, it only lasted one day; is that right?

A. Yes, that is right.

* * * *

Q. As part of the settlement of that strike, do you recall that you were reinstated? A. I was.

Q. In the employ of the company, temporarily?

A. I was re-employed.

Mr. Cannon: I move to strike the latter part out.

(Testimony of Alvin L. George.)

Trial Examiner Batten: You mean "temporarily"?

Mr. Cannon: Yes.

Mr. Ryan: I will agree to that. [203]

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Ryan): Did you participate in the settlement of that strike or the conference regarding the settlement of that strike, before the National Labor Relations Board? A. No, I didn't.

Q. In connection with the termination of that strike, do you know it to be true an arrangement was made between the company and the C. I. O., United Electrical, Radio and Machine Workers, and the Cannon Employees' Association that an election would be held about a week following?

A. Yes.

* * * *

Q. (By Mr. Ryan): Did you return to the employ of the company upon the termination of the strike? [204] A. Yes.

Q. How soon after the strike terminated?

A. The next day.

Q. The next day you returned to your job?

A. Yes.

Q. Who advised you that you were to return to work for the company?

A. Well, I guess I was advised out there that same day the strike took place. The agreement was told to us by the organizer, I would return to work.

Trial Examiner Batten: The question is who told you?

The Witness: Carl Brant, I suppose.

(Testimony of Alvin L. George.)

Q. (By Mr. Ryan): Is he a representative of the C.I.O. Radio Workers Union? A. Yes.

Q. What did he tell you in that connection?

A. He told me—

Mr. Cannon: I object to it as being altogether hearsay.

Trial Examiner Batten: I don't think there is any question about that. What did he tell you? Did he tell you to go back in and go to work?

The Witness: He told me the result of the meeting with the Labor Board. He told me to go back to work.

Q. (By Mr. Ryan): The next morning did you report to work at the plant? [205]

A. I didn't report that morning, I was sick. I called Mr. Cromwell and told him I would be in the next day.

Q. After you were back on your job working, did you receive any communication from the company that you were to receive a hearing?

A. Yes, we were to have a hearing; arbitration, I think, they called it.

Q. Pardon?

A. Arbitration, I think they called it.

Q. How did you receive that notice, in what form did you receive it?

A. Well, I guess I received it at the same time I received the notice of the strike being over, and we would return to work. That was the agreement reached.

Q. That you were to receive a hearing—

A. Arbitration on our case.

(Testimony of Alvin L. George.)

Q. —on your previous discharge?

A. Yes.

Trial Examiner Batten: You mean that was a part of the arrangement for your reinstatement?

The Witness: Yes.

Trial Examiner Batten: That was agreed to by the organization?

The Witness: Yes.

Q. (By Mr. Ryan): Now, you received notice thereafter as [206] to when the hearing was to be, your hearing, after you had gone back to work, after the strike?

A. Yes, we received notice when it was to be.

Q. How did you receive that notice?

A. I don't remember.

Q. Well, about how long had you been back to work after the strike when the hearing was given to you? A. I can't say; not very long, I know.

Trial Examiner Batten: Was it a week or two weeks or a month?

The Witness: Probably a week.

Mr. Cannon: About a week?

The Witness: It might have been, yes.

Q. (By Mr. Ryan): Was it after this Labor Board election, this National Labor Relations Board election? There was an election held out there, wasn't there, Mr. George, about a week after the strike was called off?

A. There was a Labor Board election, yes.

Q. Well, did the arbitration proceeding take place after that, after that election?

(Testimony of Alvin L. George.)

A. I don't know. It seems to me like it took place before; I couldn't say.

Q. Was it on or about or right around the time of the election, either just before or just afterward?

A. Some time around in there. [207]

Q. Will you tell us where the arbitration took place?

A. It took place in the conference room of the corporation.

Q. Will you tell us who conducted the arbitration proceedings?

A. Well, we were only called in during the latter part of it. I don't know what went on before we were called in.

Trial Examiner Batten: The question is who conducted it, who, who run it? Who was the arbitrator?

The Witness: I don't know the name of the arbitrator. There was Bob Cannon, I think he was present. Mr. Shoup, I think is his name, of the Merchants and Manufacturers.

Q. (By Mr. Ryan): Mr. Shoup?

A. Yes, Paul Shoup, and Charley Katz.

Q. Who was he? A. My attorney.

Q. The C.I.O. attorney?

A. Yes. Mr. Kaplan.

Q. Is he an attorney?

A. He is an attorney for the C.I.O.

Q. You don't know the name of the arbitrator?

A. No; a pastor of some church, I think.

Q. Were you called in and asked to testify?

(Testimony of Alvin L. George.)

A. I was called in and asked whether I accepted the decision of the arbitration or not.

Q. Was a court reporter present or any reporter present [208] making a transcript of the proceedings, that you noticed? A. I didn't notice.

Q. Did that proceeding take place in the conference room at the company's plant?

A. It did.

Q. Did you say Bob Cannon was present?

A. He was.

Q. Was Mr. James Cannon present?

A. No.

Mr. Ryan: Mr. Bob Cannon is here. I will ask you if a transcript was made of that arbitration proceedings.

Mr. Robert Cannon: No.

Mr. Cannon: No, there was not.

Trial Examiner Batten: Was your attorney in there during all the time of the hearing?

The Witness: I wasn't there. I was only called in at the last part.

Trial Examiner Batten: Was your attorney there when you were called in?

The Witness: He was, yes.

* * * *

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Q. (By Mr. Ryan): Mr. George, while you were in the arbitration hearing in the conference room there, were you advised as to the decision of the arbitration?

A. Yes, that was what I was called in to be advised about, what the decision was.

(Testimony of Alvin L. George.)

Q. Who advised you what the decision was, as it regarded you?

A. I don't recall exactly, but I think it was the arbitrator, the pastor, that advised us.

Q. What were you told the decision was?

A. We were told we would be on probation for 45 days.

Q. Was there someone there besides you that was being told the same thing?

A. Ivan Jensen. They wanted to know whether we accepted the decision or not.

Trial Examiner Batten: Well, now, what did you tell them, that you would accept it?

The Witness: I accepted it, yes.

Q. (By Mr. Ryan): Then did you leave the conference room? A. Yes.

Q. Was that conference room located up on a level above the main part of the plant where you worked? A. It was upstairs.

Q. As you came downstairs from that conference room, did you have occasion to come in contact with Mr. Ray Cromwell, [210] the superintendent?

A. He met us at the bottom of the stairs of the main plant.

Q. Did he have a conversation with you at that time?

A. Yes. He asked me what was the trouble, what was the decision. I told him. He said I wouldn't have to worry, he would get me before the 45 days was up.

Q. Wait a minute. When he asked you what the trouble was, what did you tell him?

(Testimony of Alvin L. George.)

A. I told him we were on probation for 45 days.

Q. Then did he make some statement after you told him that?

A. Yes, he said he would get me before the 45 days was up.

Q. Who was present besides you and Cromwell at that time, if anyone?

A. Jensen was apparently present, he was coming down with me.

Q. Now, did you then resume your work in the plant? A. We did.

Q. Now, before this discharge that you have testified about, and reinstatement, you were a C.I.O. member, is that right? A. I was.

Q. And in addition to being a C.I.O. member, had you been any officer of the C.I.O.?

A. Shop steward.

Q. In the plant? A. Yes. [211]

Q. Was anyone else shop steward in the plant besides you at that time for the C.I.O.?

A. Yes, there was quite a few of us.

Q. How many of you? Will you name them?

A. Can I name them?

Q. Yes.

A. The ones that were discharged were all shop stewards.

Mr. Cannon: He didn't ask you that.

Trial Examiner Batten: That last phrase may be stricken. The thing is can you name the other stewards.

The Witness: Yes. There was Lawrence Wiley,

(Testimony of Alvin L. George.)

there was Ivan Jensen, and Mr. Martin I spoke of, and myself. Of course, there were more.

* * * *

[212]

Q. (By Mr. Ryan): Mr. George, in your previous mention of Wiley I notice you referred to him as Clarence Wiley, and now you referred to a Lawrence Wiley.

A. That is the same person.

Q. The correct name is Lawrence Wiley?

A. Yes.

Mr. Ryan: Will counsel stipulate the election held by the National Labor Relations Board was held on September 9, 1941?

Mr. Cannon: I will take your statement it was so held, and subject to correction, if it is shown to have been a different date.

Q. (By Mr. Ryan): After that election, within the next couple of months or so, was a contract, to your knowledge, entered into between the company and the C.E.A.?

A. Yes.

Q. Were you advised it was a closed shop contract?

A. Yes, we were advised.

Q. After that contract was entered into, did Cromwell have a conversation with you about your joining the C.E.A.?

A. We were sent to the C.E.A. office, to join the C.E.A.

Q. By whom?

A. By Cromwell. [214]

Q. Would that have been within a few days or so after the contract was made effective?

A. It was after the contract was signed, I think.

Q. Will you tell us how that came about, that Cromwell sent you over to the C.E.A. office?

(Testimony of Alvin L. George.)

A. Yes. We were told to go to the C.E.A. office—

Q. First of all, you had to come in contact with one another, Mr. Cromwell with you or you with him, to tell you either personally or by his agent. How did it happen?

A. As I recall, his office boy—the fellow in the office with him came and told us Mr. Cromwell wanted to see us. And he sent us on over to the C.E.A. office. That is the usual procedure for notifying us.

Q. After the boy came from Cromwell, to tell you to come to Cromwell's office, did you go to Cromwell's office? A. Yes.

Q. Who went there besides you, if anyone?

A. Ivan Jensen, Gus Palm, Sidney Steinberg, and I think there was a Bill Pope.

Trial Examiner Batten: Bill Pope?

The Witness: Yes.

Mr. Ryan: Those were all employees.

Mr. Cannon: Stein, Pope, and who else?

The Witness: Sidney Steinberg, Gus Palm, Ivan Jensen, Bill Pope, and myself. [215]

Q. (By Mr. Ryan): Did Cromwell make some statement to you, in a group, after you got in there?

A. He told us to go—after we got there he told us to go on over to the C.E.A. office, which was located on Avenue 33.

Q. What did he say you should go over there for, if anything? Did he explain?

A. He explained about to sign up. I don't remember what he explained about. We were to go over there to sign up, and become members.

(Testimony of Alvin L. George.)

Q. Of the C.E.A.? A. Yes.

Q. About what time of day was this when he called you into his office?

A. Well, it was in the morning, in the fore part of the morning.

Q. Was it during your working shift?

A. Yes.

Q. Were you at your job working when this boy had come out from Cromwell's office to tell you that Cromwell wanted to see you? A. I was.

Q. After Cromwell had called you and told you what you related, did you go to the C.E.A. office?

A. We did.

Q. Did you leave immediately from Cromwell's office to go [216] over to the C.E.A. office?

A. Yes.

Q. About how far was the C.E.A. office at that time from the plant?

A. Well, it was about a block, I would say. Now it is directly across the street almost.

Q. Now? A. Yes.

Q. I am asking you about where it was at that time. A. It was about a block.

Mr. Cannon: It is the same place now it has always been; isn't that right?

The Witness: That is right. The building has grown.

Q. (By Mr. Ryan): The plant building has grown in such a way part of it is directly opposite from the office? A. Yes.

Q. Well, when you got over to the office, C.E.A.

(Testimony of Alvin L. George.)

office, whom did you find there, if anyone, in the office?

A. Bob Cannon and Ned Mandella. I think Pete Vitale was there.

Q. Now, will you tell us what was said and done there and by whom, if anyone, if anything?

A. Well, we were told to wait out in the front yard; they were taking in one at a time.

I think Gus Palm was taken in first. And he was in [217] there for a few minutes and he came back out, and he said they had fired him.

So then Steinberg was called in. He went through the same procedure. When he came back out he was fired.

Q. Is that what he said?

A. That is what he said. And then I was called in, and when I got in, why, Robert Cannon and Ned Mandella told me to sign up and go back to work, see. But after what had happened to the other fellows I figured if I signed—

Mr. Cannon: Just a minute. I move to strike that out.

Trial Examiner Batten: It may be stricken. You tell us what was said and what was done. Tell us what you said and what they said.

The Witness: They told me to sign up and go on back. I said no, I wouldn't sign because the way I understood it if I signed I was throwing myself at the mercy of the board of directors. I knew what would happen then; they would fire me.

Mr. Cannon: I object to that—

Trial Examiner Batten: Did you tell them that?

(Testimony of Alvin L. George.)

The Witness: I told him I wouldn't do that.

Trial Examiner Batten: My statement to you a minute ago was: You tell us what you said and what they said, not what went on inside your mind. Tell us what the conversation was.

The Witness: I told them I refused to sign because the [218] other two fellows had already been fired.

Q. (By Mr. Ryan): Did they say anything further to you, Mr. George?

A. They told me I wouldn't be fired, to go ahead and sign and go back to work. I told them no.

Q. When you refer to "they", who are you referring to?

A. I am referring to Ned Mandella, Robert Cannon and Pete Vitale.

Q. Who was Pete Vitale?

A. He was a member of the board.

Q. Of directors? A. Yes.

Q. Of the Cannon Employees' Association?

A. Yes.

Q. You referred to Robert Cannon. Do you refer to the same person who is here present at the counsel table? A. That is right, yes.

Q. The son of James Cannon?

A. Yes; vice-president.

Q. Can you relate any further conversation you had on that occasion?

A. Well, I was sent back outside when I refused to sign. And then I don't recall—I don't know what went on inside the building then.

Q. Of course not. [219]

(Testimony of Alvin L. George.)

A. We were called in and told to sign and go back to work, even the ones that had been discharged previously that morning.

Mr. Cannon: How long was that afterward?

The Witness: The same time we were down there. We waited outside in the yard while they conducted the business inside.

Q. (By Mr. Ryan): Then you were all called back?

A. We were all called back in and were signed up, and went back to work.

Trial Examiner Batten: You were all signed up and went back to work?

The Witness: Yes.

Q. (By Mr. Ryan): When you say you signed up, do you have reference to membership cards for the C.E.A.?

A. Membership cards, and the slip to withhold our dues.

Q. You understand when I say the C.E.A. I am referring to the Cannon Employees' Association?

A. That is right.

Trial Examiner Batten: When you say a slip on your dues, was that on the same slip you signed—

The Witness: No, it was a separate slip.

Trial Examiner Batten: A separate slip?

The Witness: Yes.

Trial Examiner Batten: Were you given both slips at [220] the same time?

The Witness: Yes.

Q. (By Mr. Ryan): Was that an authorization

(Testimony of Alvin L. George.)

to have your dues checked off by the company, under a closed shop contract? A. Yes.

Q. About how long were you away from work as a result of this proceeding?

A. Oh, a couple of hours, I would say.

Q. Did you lose any pay as a result of that?

A. No.

Q. As a result of being absent from work on that occasion? A. No.

Q. After that did you ever attend any C.E.A. meetings? A. I did not.

Q. By the way, at the time you signed up on this occasion you were down at the C.E.A. office with these other fellows you named, in addition to signing up with the C.E.A. and signing the check or slip, did you receive a C.E.A. button?

A. We did.

Q. Mandella and the others there gave you C.E.A. buttons to wear? A. Yes.

Trial Examiner Batten: Did the witness tell us when this occurred?

Mr. Ryan: He said it took place within a few days of [221] the execution of the closed shop contract, as I recall.

The Witness: I think it was a few days. It was some time after that, how long I don't know.

Q. (By Mr. Ryan): Did you continue to be a member of the C.I.O.? A. Yes.

Q. Now, Mr. George, was your employment subsequently terminated by the company about March or April of 1942? A. Yes.

(Testimony of Alvin L. George.)

Q. And about two months before it terminated did you have a conversation with Mr. Cromwell?

Mr. Cannon: About two months before?

Mr. Ryan: Before his termination in March or April of 1942.

Q. (By Mr. Ryan): Did you have a conversation with Mr. Cromwell in the cafeteria? A. I did.

Q. Will you tell us about what time of day it was?

A. It was at noon during our lunch hour.

Q. Did it take place at a dining table?

A. It did.

Q. Was anyone present, other than you and Cromwell? A. No, just him and I.

Q. Will you relate the conversation?

A. Well, he called me over to his table and asked me to sit [222] down. He asked me how I was getting along, and things like that. Then he asked me about a Mr. Conley that is vice-president of the C.I.O., State C.I.O. He asked me about a fellow by the name of Harry Bridges.

Q. What did he say?

A. He asked me if I knew them. I said yes. He asked me what kind of people they were. I told him I had met both of them and they seemed to me like they were nice fellows. He got mad. He always got mad every time you mentioned anything good about the C.I.O.

Mr. Cannon: May I have my running objection to this as being hearsay and not within the issues of the case?

(Testimony of Alvin L. George.)

Trial Examiner Batten: Yes. You tell us what he said. That is what we are interested in.

Mr. Cannon: You say he was mad?

The Witness: He got mad and said we would all get our heads cut off some day.

Q. (By Mr. Ryan): Is that all of his conversation, as you recall it? A. Yes.

Q. Now, two or three weeks before your termination of employment in March or April of 1942, did you have a conversation with Mr. Johnny Gibson?

A. I did.

Q. Will you tell us who Johnny Gibson was, and is? [223]

A. He is an employee of the company. At that time he was chairman of the Grievance Committee of the C.E.A., Cannon Employees' Association.

Q. Where did that conversation take place?

A. It took place in the cafeteria after working time. We had just quit.

Q. The shift had just ended?

A. The day shift had just ended. We were drinking coffee.

Q. You and Gibson were drinking coffee in the cafeteria? A. Yes.

Q. Is this a cafeteria located there at the company's plant? A. It is.

Q. Did you and Gibson have a conversation?

A. We had a conversation about a girl by the name of Elsie Monjar.

Q. And was anyone present other than you and Mr. Gibson?

(Testimony of Alvin L. George.)

A. Not at that particular time. There were others around there.

Q. Who was Elsie Monjar?

A. She was an employee of the company.

Q. Was she, to your knowledge, an active C.I.O. member?

A. She was a member of the C.I.O.

Q. The same organization you belonged to?

A. The same organization.

Q. What was the conversation about? Will you relate the [224] conversation?

Mr. Cannon: May I have a running objection to this as being hearsay and being out of the presence of the management or the respondents, and not made an issue in this case?

Trial Examiner Batten: Yes, you may have an objection. I will determine, after the witness states the conversation, whether it has any bearing on the issues here.

Q. (By Mr. Ryan): Will you relate the conversation?

A. He told me that Bereznak and Vitale were framing Elsie Monjar, to get rid of her, to fire her.

Q. Thereafter, later that day or the next day, did you see Elsie Monjar?

A. The next day at noon I saw her.

Q. Did you have a conversation with her?

A. I told her exactly—

Q. Where did the conversation take place?

A. It took place in the main building, the main department there as you go inside the building.

Q. By the way, these two people that Gibson

(Testimony of Alvin L. George.)

mentioned, namely, Vitale and Berezenak, were they both officers of the C.E.A.?

A. Yes. Bereznak was secretary and I believe Vitale was a member of the Board of Directors.

Q. Going to the conversation with Elsie Monjar, was anyone present other than you and Miss Monjar on that occasion? [225]

A. There must have been, but I didn't pay any attention, I guess.

Q. Will you tell us what you said and what she said?

Mr. Cannon: May I have the same objection to that conversation?

Trial Examiner Batten: You may have the same objection.

The Witness: I told her what had been related to me by Mr. Gibson at the cafeteria the night before, that they were framing her and were going to try to get her fired.

Q. (By Mr. Ryan): Did she say anything?

A. Not that I recall.

Q. Now, within a half hour or so after you had talked to Elsie Monjar in this conversation you have just related, were you called into the conference room of the company?

A. I was. I don't know whether it was that same day or the next day following that I was called into the conference room again.

Q. Will you tell us who called you in there?

A. I believe the office boy notified me again to come to the conference room.

Q. Whose office boy? A. Cromwell's.

(Testimony of Alvin L. George.)

Q. Superintendent Cromwell? A. Yes.

Q. Were you called away from your work? [226]

A. Yes.

Q. Did you go to the conference room?

A. I did.

Q. When you got there, who was there, if anyone?

A. All the board of directors of the—

Q. Of the Cannon Employees' Association?

A. —the Cannon Employees' Association and Cromwell. I think Renter was there.

Q. Who was Renter?

A. I believe he was personnel manager for the company.

Q. For the company? A. Yes.

Q. Did you mention Cromwell was present?

A. Yes, he did the talking.

Q. When you got there, who made any statements to you?

A. Raymond Cromwell, the superintendent.

Q. Were you advised as to why you were being called in there? A. Yes, he told me.

Q. What did he say?

A. He told me I was being called in, they wanted to know who told me that Elsie was framed. So not knowing Gibson I didn't want to cause him—

Mr. Cannon: I move to strike that out for the reason it is argumentative.

Trial Examiner Batten: It may be stricken. Tell us what [227] was said and what was done.

Q. (By Mr. Ryan): What did you say when he asked you—

A. I told him the guilty party was there, I didn't

(Testimony of Alvin L. George.)

want to put my finger on anybody; let them acknowledge it themselves.

Q. Was Johnny Gibson present?

A. He was present. I didn't know what kind of a fellow he was. I knew any time you implicated anyone else out there someone got fired, so I didn't tell them. I told them I wanted advice of counsel.

Mr. Cannon: I move to strike that out.

Trial Examiner Batten: That last phrase may be stricken.

Q. (By Mr. Ryan): Mr. George, have you told us all of your reply to that?

A. I told him I wanted advice of counsel. They said they would give me until 2:00 o'clock the next day to get it.

Q. Then you left the conference room; did you?

A. I did. That evening after work I went to see the lawyer at the C.I.O. Building. He told me about the only thing I could do was make an affidavit of the conversation held in the cafeteria and give it to them.

Q. Did you make an affidavit?

A. I did. Ivan Jensen and I went to the Notary Public and made the affidavit.

Q. The next day at 2:00 o'clock did you go back to the conference room? [228]

A. I was called back in again.

Q. Who called you in on that occasion?

A. The office boy.

Q. Cromwell's office boy? A. Yes.

Mr. Cannon: Who called him?

Mr. Ryan: Cromwell's office boy.

(Testimony of Alvin L. George.)

The Witness: It would save a lot of time if I could tell his name. Howard something.

Mr. Cannon: Is it Howard Jorgensen?

The Witness: That is right.

Q. (By Mr. Ryan): About what time were you called in then, around 2:00 o'clock? A. Yes.

Q. In the afternoon? A. Yes.

Q. Who was present on that occasion?

A. The same ones that were present at the first one, all the Board of Directors, Cromwell, the lawyer for the C.E.A.

Q. Who was with you, if anyone? Was anyone with you? A. No one.

Q. Who opened the conversation on that occasion?

A. I think on this occasion Lewis of the C.E.A. opened it this time. [229]

Mr. Cannon: He is a lawyer?

The Witness: Lawyer for the C.E.A.

Mr. Ryan: Joe Lewis.

Q. (By Mr. Ryan): Do you recall what he said?

A. He got up and read off a bunch of charges, which included practically the whole by-laws and constitution of the Cannon Employees' Association.

Q. Was he reading from the Cannon Employees' Association by-laws? A. Yes.

Q. Could you see what he was reading from?

A. Yes, he was reading from the by-laws.

Q. By-laws of the C.E.A.? A. Yes.

Q. How long did it take him to read the charges?

A. Just a few minutes.

(Testimony of Alvin L. George.)

Q. Were you accused of violating the by-laws of the C.E.A.?

A. Yes, I was accused of violating practically everything.

Q. In substance, can you relate what he was charging you with?

A. He was charging me with—I can't say right now. I would have to read them by-laws again; it practically covered everything.

Q. He accused you of violating them and proceeded to read [230] the by-laws? A. Yes.

Q. Did he explain how you had violated them?

A. No, he didn't explain how I had violated them. I was just charged.

Q. Then were you asked to make any statement?

A. I was asked to tell who it was that told me, the conversation I had with Gibson. So I give them the notarized statement I had made the night before.

Q. Whom did you give it to?

A. I just laid it out on the table; Cromwell took it, I think.

Trial Examiner Batten: You will have to keep your voice up. What did you say there at the last?

The Witness: I laid the affidavits out on the table. I think Cromwell picked them up.

Q. (By Mr. Ryan): Did you receive the affidavit back? Was it returned to you?

A. Lewis kept one; I had two.

Q. Lewis kept one, and who kept the other?

A. I think I kept the other.

* * * *

[231]

Q. In substance, did it relate to this matter of

(Testimony of Alvin L. George.)

the Monjar incident and your conversation with Gibson about Monjar? A. Yes.

* * * *

Q. (By Mr. Ryan): Will you relate what was said and done after you had turned your affidavit over to Mr. Lewis there and to Mr. Cromwell?

Mr. Cannon: Not to Mr. Cromwell.

Q. (By Mr. Ryan): Or laid it on the desk, I guess that is what you said.

A. Then it was passed around and they apparently all read it. Gibson denied it. Cromwell told me to go on back down to work.

Q. And you did? [232] A. I did.

Q. Now, about a week following that conference did you again have a conversation with Mr. Cromwell, Superintendent Cromwell?

A. Yes. After that I was called into the office again by the office boy and Mr. Cromwell told me—handed me my check and said I was being fired.

Q. Mr. George, was that, to the best of your recollection, about a week after you had been up to the conference room?

A. I think it was about a week later. It wasn't much longer than that, if any.

Q. Were you at your job working when you were called into Cromwell's office upon this occasion?

A. I was.

Q. When you got to Cromwell's office was anyone there other than Cromwell and you, that you can recall?

A. Yes, the office was full but I don't recall their names.

(Testimony of Alvin L. George.)

Q. Full of people?

A. The foreman of the die cast machine—tool room, and two or three others.

Mr. Cannon: Is that when you were fired?

The Witness: Yes.

Q. (By Mr. Ryan): Do you recall the names of the foremen that were present?

A. I can't right now. I could find out. I don't know exactly the names of them. [233]

Q. What time of day was it?

A. In the afternoon.

Q. Was your shift over? A. No.

Q. Will you state what was said there in the office of Mr. Cromwell and by whom, on that occasion?

A. He said I was being fired—handed me a check. I said, "What am I being fired for?"

He said, "Spreading false rumors."

Q. Did anyone else say anything?

A. Not then. I went back out to get my tools. When I went out to get my tools my foreman, who is Henry Hintemeyer—

* * * *

[234]

Q. (By Mr. Ryan): Mr. Hintemeyer was the foreman of the department in which you worked?

A. He was.

Q. What department was that, on that occasion?

A. That was in the machine shop. I was in the automatic department on ice cream machines.

Q. Was he foreman of the automatic department? A. Yes.

(Testimony of Alvin L. George.)

Q. Who was the foreman of the whole machine shop?

A. He was foreman of the whole machine shop.

Q. When you left Cromwell's office did you return to your machine there in the shop?

A. I returned to get my tools, yes, sir.

Q. Was it there that you had the conversation with Hintemeyer? A. It was.

Q. Did he come up to you there?

A. He came up to me and asked me what was the matter. I told him I was being fired—I was fired.

He asked me what for, and I told him for spreading false rumors, they said.

So he said he wanted me to know he didn't have anything to do with it and he was going to tell Cromwell that he wasn't having anything to do with it. I was a good worker and whatever Cromwell did he did on his own, he had nothing to do with [235] it.

* * * *

[236]

Q. Have you related all the conversation with Mr. Hintemeyer? A. I have.

Q. Then after he had talked to you, did Hintemeyer leave and go to Cromwell's office?

A. Yes.

Q. Did you see him go into Cromwell's office?

A. Yes.

Q. Then did he come back to you in a few minutes?

A. He came back and told me he told him he wasn't going to have anything to do with my discharge.

(Testimony of Alvin L. George.)

Q. He said that to you, that he had told Cromwell that? [237] A. Yes.

Q. Then did you leave the plant? A. I did.

Q. Have you ever worked for Cannon Manufacturing Corporation since that day? A. No.

Q. Or Cannon Electric Development Company?

A. No.

Q. Either of those two companies?

A. No.

* * * *

[238]

Q. I believe you stated that you continued in the C.I.O. up to the time of your final discharge; is that right? A. Yes.

Q. Even though you had to belong to the C.E.A., under the closed shop contract?

A. That is right.

Mr. Ryan: Miss Reporter, will you mark this Board's exhibit next in order, please?

(Thereupon, the document referred to was marked as Board's Exhibit No. 31, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 31 for identification what purports to be a copy of a petition for investigation and certification of representatives, pursuant [240] to Section 9(c) of the National Labor Relations Act, in the matter of Cannon Electric Development Company and Cannon Manufacturing Corporation and Cannon Employees' Association, Case No. 21-R-1354, and dated June 9, 1941. I show it to counsel and ask for a stipulation that that is a copy of the petition which was filed by

(Testimony of Alvin L. George.)
the Cannon Employees' Association on the date it bears.

Mr. Cannon: If it comes from your files I will say yes, I so stipulate.

Mr. Ryan: I offer the copy in evidence.

Trial Examiner Batten: What is the purpose of this?

Mr. Ryan: It is part of the history leading up to the first National Labor Relations Board election. It was on the petition the election was held. I can introduce it by reference, but I thought perhaps it would be well to have a copy in the record.

Trial Examiner Batten: You will not need to provide a duplicate, that is, as far as the record is concerned. It will be received.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 31, was received in evidence.)

Q. (By Mr. Ryan): Now, this morning, Mr. George, you referred to a settlement of the strike which occurred on about September 2, 1941, when you were telling about the strike [241] this morning.

Mr. Ryan: Please mark this document, Miss Reporter, as Board's exhibit next in order.

(Thereupon, the document referred to was marked as Board's Exhibit No. 32, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 32, for identification, a document entitled "United States of America, Before the National

(Testimony of Alvin L. George.)

Labor Relations Board, Twenty-First Region, In the Matter of Cannon Manufacturing Corporation and Cannon Employees' Association, Case No. 21-R-1354. Strike Settlement Agreement," purporting to bear the signatures of James H. Cannon for the Cannon Manufacturing Corporation, and United Electrical, Radio and Machine Workers of America, Local 1421, C.I.O., by Ralph Dawson, and approved by William R. Walsh, Director of the Twenty-First Region of the National Labor Relations Board, and by H. C. Malcolm, Conciliation Service, Department of Labor, and George B. Roberts, Office of Production Management.

I might say attached to the two-page document I have just described is another document entitled "Agreement Consent Election," and it appears to be a separate document but a part of the complete transaction. They are both referring to the same transaction. I show it to counsel.

Mr. Cannon: I have no objection to its going in evidence. [242]

Trial Examiner Batten: There being no objection it will be received.

(Thereupon, the document heretofore marked as Board's Exhibit No. 32, for identification, was received in evidence.)

Trial Examiner Batten: You do not need to furnish a duplicate of that.

Q. (By Mr. Ryan): Now, Mr. George, in your testimony this morning about the hearing arbitration proceeding which you attended shortly after you

(Testimony of Alvin L. George.)

returned to work after the strike, do you recall your testimony in that regard this morning?

A. Yes.

Q. You stated that you were called in the arbitration hearing room and advised there you were being returned to work on 45 days' probation?

A. That is right.

* * * *

[243]]

Cross-Examination

Q. (By Mr. Cannon): When you first went to work for Cannon's, [244] what were you doing?

A. Carpenter's helper.

Q. Scraping a boat? A. Yes.

Q. And who was your immediate superior then?

A. Well, I suppose the carpenter over me was.

Q. Who? A. I don't know his name.

Q. Did you have someone there supervising your work as you scraped that boat?

A. Mr. Cannon there was the only one that said anything about the work.

Q. You mean James H. Cannon? A. Yes.

Q. I mean he wasn't standing there while you were scraping the boat?

A. Nobody stood there and watched me scrape the boat.

* * * *

[245]

LAWRENCE M. WILEY,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: [305]

(Testimony of Lawrence M. Wiley.)

Direct Examination

* * * *

Q. Were you ever employed by Cannon Manufacturing Corporation? A. Yes, I was.

Q. When were you first employed by that company? A. The latter summer months of 1940.

Trial Examiner Batten: Mr. Wiley, would you just speak a little louder, please? [306]

Q. (By Mr. Ryan): In what capacity were you employed?

A. Experimental layout on drill press.

Q. On drill presses? A. Yes.

Q. Are you still employed by the company?

A. No, I am not.

Q. When was your last employment, approximately?

A. Either October or November of 1941.

Q. 1941? A. Yes.

Q. Mr. Wiley, who was your supervisor while you were employed by the company?

A. I don't recall, all I can remember is White.

Q. His name was White?

A. Yes; nickname.

Q. What department was he supervisor over?

A. Drill press.

Q. Would he be the foreman of the drill press department? A. Yes.

Trial Examiner Batten: That was on the day shift, Mr. Wiley?

The Witness: Day shift.

(Testimony of Lawrence M. Wiley.)

Q. (By Mr. Ryan): Did you have the same supervisor all the time you were employed?

A. No, I had one before that, I can't recall his name. [307]

Q. When you first went to work for the company? A. I believe it was Herb Elgin.

Q. Now, in the early part of 1941 I ask you whether or not it came to your attention that an employees' organization by the name of Cannon Employees Recreation Association was being formed in the plant?

A. Yes, it was in the early part of January.

Q. 1941? A. Yes.

Q. By what means did it first come to your attention that such an organization was being formed?

A. When I took a week's leave of absence and got married. When I came back Mandella had a petition in the tool crib window to join the recreational activities and form a club for recreation and activities for athletics.

Q. You say it was right after you came back from being married? A. Yes.

Q. Can you remember the date of your marriage? A. It was the 26th of January.

Q. 1941? A. Yes.

* * * *

Q. (By Mr. Ryan): Mr. Wiley, did you go to the tool crib about a week after you got back and see this Mandella?

A. Yes, I went to the tool crib four or five times a day.

(Testimony of Lawrence M. Wiley.)

Q. For what purpose?

A. To check tools out.

Q. For use on the job?

A. For use on the job.

Q. Did you have a conversation with Mandella then? A. Yes, I did.

Q. Did this first conversation regarding the Recreation Association take place about a week after you returned from being married?

A. It was sooner than that. It was about the next day. He had quite a list of names when I came back. He approached me on the subject of joining and he explained to me it was to be a recreation club for athletics, so I joined.

Q. Did he have a sheet of paper there, you say, or a petition?

A. It was a sheet of paper, to sign.

Q. Where was this petition?

A. In the tool crib window.

Q. The window where you went up to get your tools? [309] A. Yes, sir.

Q. Was it posted there?

A. It was laying on the bench.

Q. On the bench? A. Yes.

Q. Did this petition have a list of employees' names on it? A. Yes, it did.

Q. After Mandella had made his statement to you as to what the organization was for, did you make any statement?

Mr. Cannon: May I have my running objection to this, as being hearsay?

(Testimony of Lawrence M. Wiley.)

Trial Examiner Batten: You may have the same objection to this Mandella conversation as you had with respect to George's testimony.

Mr. Cannon: Thank you.

Q. (By Mr. Ryan): Did you make any statements during that conversation?

A. No. I thought it was a good idea to have something like that in a company that size.

Mr. Cannon: I move to strike it out as his own conclusion, unless Mr. Mandella told him that.

Q. (By Mr. Ryan): Did you say that to Mandella?

Trial Examiner Batten: I think he can tell us that he thought it would be a good idea, and he signed it. I don't see anything wrong with that [310] Is that the fact, Mr. Wiley?

The Witness: Yes.

Q. (By Mr. Ryan): About what time of day was this, Mr. Wiley?

A. It was in the morning. I don't exactly recollect.

Q. Was it during your working hours?

A. Yes.

Q. Was it during Mandella's working hours?

A. Yes.

Q. After signing up with the Association that Mandella told you about, did you take any further part in the Recreation Association?

A. Not right at that present time.

Q. How long after that was it that you and Mandella had further conversations, if ever, about the Association?

(Testimony of Lawrence M. Wiley.)

A. It was when the election was coming up for officers in the organization.

Q. About how long was that after you had your conversation with Mandella, that you have already testified to? A. About two weeks.

Q. About two weeks. How did it come to your attention that an election was going to be held in connection with this Association?

A. He picked so many people out of each department and posted them on the bulletin board, and wanted people to elect [311] president, vice-president and so on, and a board of directors.

Q. Mandella did? A. Mandella.

Q. Did you see him put the names on the board?

A. I didn't see him put them on, but I saw the names up there afterwards.

Q. How did it come to your attention as to how they got there?

A. Mandella told me how he put them up there. He took so many people out of each department.

Q. He picked the names of so many people and put them on the board? A. Yes.

Q. Then was an election held shortly after those names appeared? A. Yes, sir.

Q. By the way, where were those names written?

A. They were typewritten on a piece of paper and posted on the bulletin board.

Q. Company bulletin board in the shop?

A. Yes, right next to Cromwell's office.

Q. How long did the list of names remain on the bulletin board, approximately?

(Testimony of Lawrence M. Wiley.)

A. I imagine a week.

Q. About a week? [312] A. Yes.

Q. Was the election held during that week then to decide which of them would become officers of this Association? A. The first election was.

Q. The first election was, you say, held during that week? A. Yes.

Q. Will you describe how the mechanics of the holding of that election were conducted?

A. The first two or three highest out of the shop was put in as—for the next election. And they were chosen and put on the bulletin board. They had a run-off election for the finals——

Q. Yes, but how was the vote taken in that first election?

A. It was taken by ballot in a ballot box. I think it was off a mimeographed sheet of paper, giving the names, if I am not mistaken.

Q. The names of the candidates?

A. Candidates. And they were put in a ballot box and then counted later.

Q. Was the ballot a mimeographed ballot, you say? A. I believe it was.

Q. Were the names on it, the best you can recall?

A. I believe so.

Q. How were those ballots given out to the people who were going to vote on them? [313]

A. Some of them were passed out among the departments and some were left on a table next to the ballot box.

Q. Where was the ballot box located?

(Testimony of Lawrence M. Wiley.)

A. In the runway between—well, between the plating department and Cromwell's office.

Q. How long did the voting hours last?

A. I imagine all afternoon.

Q. All afternoon? A. Yes.

Q. Was that during a working day?

A. Yes.

Q. These ballots, after they were distributed to the employees, where were they marked. By the way, were booths set up in the plant? A. No.

Q. How would a man vote the ballot after he had received it? Do you know what mechanics were followed in that regard?

A. No, I don't. He just marked his favorite candidate, I imagine, and dropped it in the box.

Q. Is that what you did? A. Yes.

Q. And you took it over and dropped it in the ballot box? A. Yes.

Q. Did you do that during the working hours?

A. Yes. [314]

Q. Did you observe that was the general practice of holding the election? A. Yes.

Q. After the balloting was completed were the votes taken some place and counted?

A. Yes, they were taken to a room next to the sand blast.

* * * *

Q. (By Mr. Ryan): Did you act as one of the tally clerks that counted the ballots?

A. Yes.

Q. By the way, who, if any one, stood in charge

(Testimony of Lawrence M. Wiley.)

of the ballot box during the actual voting in the hours that it was left there? A. No one I saw.

Q. It just stood there on a table near Mr. Cromwell's office? A. Yes, sir.

Q. Who took the ballot box and went over to the place where you did the counting?

A. It was Ned Mandella, Spencer Messick and Harry Dean and [315] myself.

Q. Were they fellow employees? A. Yes.

Q. Those other people besides Mandella, had they been active in the Association you were active in then, and Mandella? A. Yes.

Q. They were also leaders, were they, and Mandella? A. Yes.

Q. Now, as a result of that voting and the counting of ballots, who ended up as president of the Association? A. Ned Mandella.

Q. Who were the other officers that were elected at that time?

A. Spencer Messick, Ray Spoeleman, Robert Miller, Harry Dean and Jerry Syphers and myself.

Q. After that election did you thereafter take any active part in solicitation for members for the Association among the employees in the plant?

A. Yes, I did.

Q. Had you done it before the election also?

A. No.

Q. After the election that you have just testified to, what activity did you engage in, so far as solicitation of members was concerned?

A. Just contacted people that hadn't joined the

(Testimony of Lawrence M. Wiley.)

Recreation [316] Association and had them sign cards, or I talked to them about signing cards.

Q. Where did you approach these people, to get them to sign cards?

A. Well, some of it was done on company time and some of it was done outside.

Q. Can you name the departments in which you were active in soliciting membership?

A. Drill press, burring, hand mill, punch press.

Q. About how many employees did you contact?

A. Well, I imagine I contacted 20 or 30. There was about 40 to 45 in the department.

Q. What department is that?

A. Well, that was drill press and burring and hand milling.

Q. Did you have cards for this Association, for them to sign? A. Yes, we did. [317]

* * * *

Mr. Ryan: Miss Reporter, will you mark this document as Board's Exhibit next in order?

(The document referred to was marked as Board's Exhibit No. 34, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 34 for identification a card about 3½ inches long and about 2 inches wide with the name "Cannon Employees Recreation Association" printed on the face of it, together with other matters.

Do you care to look at it?

Mr. Cannon: I saw it.

Q. (By Mr. Ryan): Mr. Wiley, I show you the card and ask you whether or not that is a card of

(Testimony of Lawrence M. Wiley.)

the Association about which you have been testifying? A. Yes.

Q. Were those the kind of cards that were circulated for the employees to sign?

A. This was the second batch we had printed.

Q. Were the first ones of similar character?

A. Yes. The first bunch was similar.

Q. Was there a difference in them, however?

A. Yes, they were green. They had round corners and Cannon Employees Recreation Association was put on the bias instead of straight across, and the Cannon emblem was printed in the center.

Q. The Cannon Company emblem was printed in the center? A. Yes.

Trial Examiner Batten: Where did you have those printed?

The Witness: On Ninth Street, between Broadway and Hill.

Trial Examiner Batten: Is that where you had the first ones printed?

The Witness: Yes.

Mr. Cannon: Broadway between Ninth and Tenth?

The Witness: On Ninth between Broadway and Hill.

Q. (By Mr. Ryan): The name of the Association was on the first ones, the same as it is printed here, except the first ones had the name in the shape of an arc? A. Yes.

(Testimony of Lawrence M. Wiley.)

Mr. Ryan: I offer in evidence Board's Exhibit 34 to show the physical arrangement of the card. It is the only card I have.

Trial Examiner Batten: There being no objection it will be received. You don't need to have a duplicate of that, unless, of course, we happen to find one.

(Thereupon, the document, heretofore marked as Board's Exhibit No. 34, for identification, was received in evidence.) [319]

Q. (By Mr. Ryan): Now, Mr. Wiley, when you were contacting these employees in connection with getting them to sign these Recreation Association cards you said you contacted some of them during working hours. Did you do it right during your working hours? A. Yes.

Q. Over what period of time did you continue to be active as a solicitor for that Association?

A. Until about the first of April.

Q. 1941? A. Yes.

Q. Then what did you do?

A. That was after they decided to incorporate into a company union and call it C.E.A. [320]

* * * *

Q. (By Mr. Ryan): Mr. Wiley, you did resign from the Association about the first of April, you say, 1941? A. Yes, sir.

Q. Did you thereafter join any labor organiza-

(Testimony of Lawrence M. Wiley.)

tion while you were in the employ of the company?

A. I joined the C.I.O.

Q. Is that the United Electrical, Radio and Machine Workers, C.I.O.? [321]

A. That is right.

Q. And about when did you join that organization? A. About the middle part of April.

Q. Now, of that same year, 1941?

A. Yes, sir.

Q. Did you become active in that organization, the C.I.O.? A. Yes, I became shop steward.

Q. You were appointed shop steward by the C.I.O., or were you elected shop steward?

A. I was elected shop steward.

Q. Did you wear any evidence of your position with the C.I.O. while you were in the shop?

A. I wore a shop steward badge.

Q. C.I.O. shop steward badge? A. Yes.

Q. While you were on the job at Cannon's?

A. Yes, sir.

Mr. Cannon: I understand it was a C.I.O.'s shop steward badge?

The Witness: Yes.

Trial Examiner Batten: I presume when you say it was C.I.O. it was the United Electrical Workers?

The Witness: Yes.

Trial Examiner Batten: I think we ought to be a little more careful in the use of those two terms, because frequently [322] we run into quite some difficulty in the record.

(Testimony of Lawrence M. Wiley.)

Now, the witness didn't wear a C.I.O. shop steward button; he wore a U.E. shop steward button; isn't that right correct?

The Witness: It didn't specify U.E.; it said "Shop Steward C.I.O."

Trial Examiner Batten: "Shop Steward C.I.O.", that is the thing I wanted to clear up.

Q. (By Mr. Ryan): Do you recall that there was a campaign carried on then by the C.I.O., to organize the employees, to get members among the employees in the company for the next few months following? You joined prior to an election held by the Labor Board? A. Yes.

Q. Now, about August 28th or 29th did you have occasion to have a conversation with Superintendent Cromwell, in 1941? First of all, I will ask you if you remember an incident about August 28th or 29th when some employees came up to you while you were on the job?

A. Yes, some of the new employees approached me about joining the C.I.O.

Q. While you were on the job?

A. While I was on the job.

Q. About how many of them?

A. There were two. [323]

Q. They came up to you together or singly?

A. Singly.

Q. Was that the only occasion it happened while you were in the employ of the company?

A. They come back to me two or three times during the day.

(Testimony of Lawrence M. Wiley.)

Q. Those same two people?

A. Those same two people.

Q. That particular day? A. Yes.

Q. They were people just hired into the shop?

A. Yes.

Q. Do you recall what their names are?

A. No, I can't remember.

Q. Did you have a conversation with them?

A. I told them I couldn't do any soliciting on company time, and to come see me after work. But they kept persisting, so I gave them a card to fill out for the U.E. They did it and handed it back to me.

Q. Then at the time that they came up to you, was there any one present other than you and these couple of fellows?

A. I was working there with people all around me.

Q. Within a few minutes thereafter did you have occasion to be in Mr. Cromwell's office, the superintendent?

A. Yes, Cromwell's office boy, Howard, came out and said Mr. Cromwell wanted to see me. [324]

Q. About how long was that after you had given the C.I.O. cards to these two gentlemen who had come to you and asked for them?

A. About 10 minutes.

Q. Did you go to Mr. Cromwell's office then when this boy came and told you he wanted to see you?

A. Yes, I went immediately to his office.

(Testimony of Lawrence M. Wiley.)

Q. Will you tell us whether any one was in the office besides you and Mr. Cromwell?

A. Nobody.

Q. Did you and Cromwell have a conversation on that occasion?

A. Yes. He said I was being——

Mr. Cannon: My objection goes to this, may it, Mr. Commissioner?

Trial Examiner Batten: Yes, you may have an objection.

The Witness: He said I was being fired. I wanted to know why. He said, "Because of soliciting for the union on company time."

Q. (By Mr. Ryan): Had you ever done any soliciting before that? A. Not for the C.I.O.

Trial Examiner Batten: Well, did you have anything to say at that time yourself? What did you say to him?

The Witness: There was nothing I could say. I said, [325] "All right."

Q. (By Mr. Ryan): Did that end the conversation? A. Yes, sir.

Q. What did you then do, leave his office?

A. I left his office and packed my tools and left the building.

Q. Now, after you left the building, what did you do?

A. Well, there was two or three others that were fired the same day, so I contacted them and we talked to Carl Brant.

Q. Who is Carl Brant?

(Testimony of Lawrence M. Wiley.)

A. Carl Brant was an organizer for the C.I.O.

Q. Who were these two or three others that were with you when you contacted him?

A. There was Al George and Frenchy Martin and I believe it was Ivan Jensen.

Mr. Cannon: Al George, Martin and Jensen?

The Witness: Yes.

Q. (By Mr. Ryan): Then within a day or two after that did the C.I.O., United Electrical, Radio and Machine Workers, take a vote to strike?

A. Yes, we had a meeting on a Sunday morning.

Q. Following the termination of your employment?

A. Following the termination.

Q. Was a vote taken there as to what action the C.I.O. would take? [326]

A. A vote was taken to strike.

Q. To strike the plant?

A. Yes.

Q. Was that strike in connection at all with the fact you had been discharged there?

A. I believe the whole thing came up over the discharges.

Q. And the strike was called then for about September 2, 1941; is that right?

A. That was a Tuesday morning.

Q. The strike lasted about one day?

A. One day.

Q. Then did you and Al George and these other men you have mentioned return to the employ of the company?

A. All but Frenchy Martin.

Q. I show you Board's Exhibit 32, Mr. Wiley, and direct your attention to paragraph No. 2 on the

(Testimony of Lawrence M. Wiley.)

first page, "That it is agreed on behalf of the company that four of the five discharged employees will immediately be returned to work. These employees are as follows: Al George, Ivan Jensen, Robert Lyles and Lawrence Wiley."

Is the Lawrence Wiley referred to therein you?

A. Yes, sir.

Q. Did you return to work after that strike?

A. I returned the next morning.

Q. Were you put back in the same job you had had when you [327] were terminated?

A. Yes, sir.

Q. Before the strike? A. Yes.

Q. How long did you continue to work for the company after that?

A. Until one or two days after the election.

Q. After the National Labor Relations Board election on September 9, 1941? A. Yes.

Q. What did you do then? A. I quit.

Q. A couple of days after the Labor Board election? A. Yes, sir.

Q. Have you worked for the company since?

A. No, sir.

Mr. Ryan: That is all. [328]

Cross-Examination

* * * *

Q. Mr. Wiley, this Recreation Club, the card of which has been introduced here, were you on the directorate of that?

A. Yes, I was on the board of directors.

(Testimony of Lawrence M. Wiley.)

Q. Did you hold any office?

A. Just the board of directors.

Q. How many other men served with you on that directorate? A. I believe there were five.

Q. Those were the men you named a little while ago, Jerry Syphers and some of those men?

A. Yes.

Q. That operated from the time you were contacted in January of 1941 until April of 1941?

A. Yes, sir.

Q. Did you ever hold any meetings of the board during that period? A. Yes, we did. [329]

Q. Where did you hold them?

A. We had the first meeting at Lewis' office. That was the attorney for the Recreation Association. And the second meeting was held in, I think it was called Trolley Cafe, or something, out in the north part of town. And then the third meeting was at the Italian Kitchen with Lewis again.

Q. With Mr. Lewis, the attorney?

A. Yes.

Q. That is Joseph Lewis?

A. I believe it is.

Q. The one that has an office over in the Garfield Building, anyway? A. Yes.

Q. He is now in the service; is he not?

A. Yes.

Q. Mr. Wiley, were you one of the organizers of that or was it a corporation, or what was it?

A. It was a corporation.

(Testimony of Lawrence M. Wiley.)

Q. Were you one of the incorporators, or do you know?

A. Yes, I signed the corporation.

Q. When Mandella first presented this matter to you when you first got back in January, 1941, the company at that time had not been formed as a corporation?

A. No. [330]

* * * *

Q. (By Mr. Cannon): In the questions I propounded to you, with respect to questions I have asked you in my cross-examination about the company, you understood I had in mind this Cannon Employees Recreation Association, didn't you, Mr. Wiley?

A. Yes.

Q. I meant to have them so apply. Now, was this association dissolved, do you know?

A. Yes.

Q. What happened to it?

A. It changed the name from Recreation to C.E.A.

Q. Was that done on a vote in Mr. Lewis' office, or do you [331] know?

A. I was put before the board of directors, and the board of directors went in favor of it. That is when the C.I.O. was first getting strong and it was their contention to keep out the C.I.O.

Q. Did you attend that meeting when the vote was taken on this change of name?

A. Yes.

Q. You signed the papers as a director for the change of name to C.E.A. or Cannon Employees' Association?

A. Yes, sir.

Q. Who else besides the directors of Cannon

(Testimony of Lawrence M. Wiley.)

Employees' Association and Mr. Lewis were present? A. None.

Q. Were the articles of incorporation, if you know, of the Cannon Employees Recreation Association amended in any other particular than the change of name? A. That I couldn't say.

Q. You don't remember one way or the other on that; do you? A. No.

Q. During these meetings you held you say you only attended three meetings, or was it four meetings that you as a directorate attended?

A. Outside of membership meetings. [332]

Q. Well, now, first, I will get into the directors' meetings. You attended three or four directors' meetings? A. Yes.

Q. Did you then hold some other membership meetings?

A. Yes, we had membership meetings.

Q. Only one. A. We had four or five.

Q. Where were they held?

A. Sunday Morning Breakfast Club.

Q. The one on Riverside Drive.

A. Yes,—no, it isn't on Riverside Drive. It is right off Avenue 26, I believe.

Q. Now, when you read the articles of incorporation of this Cannon Employees Recreation Association they were incorporated as a recreation club? A. Yes.

Q. And Mandella had told you to use the recreation club; is that right?

A. That and that only.

(Testimony of Lawrence M. Wiley.)

Q. How is that? A. That and that only.

Q. All the time you were connected with it it did conduct itself as a recreation club; did it not?

A. That is true.

Q. It was conducted as a recreation club during the whole [333] time you were doing any soliciting for members in the plant for this Association; is that correct? A. Until I resigned in April.

Q. You resigned right after the Association name was changed; is that correct?

A. That is right.

Q. Now, this posting you talk about on the bulletin board next to Mr. Cromwell's office, that bulletin board was in that same location the entire time the company plant No. 2 was in operation; wasn't it?

A. No, it was changed later. It was changed down to the die-cast room later because the time clock was changed down there.

Q. It was moved near the time clock; is that correct? A. Yes.

Q. When it was over by Cromwell's office, between Cromwell's office and the plating department, that was where the most of the employees passed to and from the cafeteria and various places; wasn't it? A. That is right.

Q. It was the most accessible place for persons to see bulletins on the bulletin board?

A. Yes.

Q. These postings of names that occurred with respect to the election of officers and also the elec-

(Testimony of Lawrence M. Wiley.)

tion of directors [334] were from that list?

A. Yes.

Q. Now, that posting all occurred, did it not, before the change of name to C.E.A.?

A. Yes, sir. That was when the Recreation Association was first organized.

Q. That is what I mean. That is the only time the postings occurred on there with respect to the elections you have been talking about?

A. That was the only election held.

Q. You say it was the only election. You mean when the name was changed the same officers and board of directors just continued on?

A. Some of them did, and we appointed new ones when some of them resigned.

Q. I am speaking about where you spoke a little while ago about these names being set up on a list, and they voted for some. You virtually had a primary and then a run-off; isn't that correct?

A. That is correct.

Q. That is the election I speak about, where the postings occurred on the board. A. Yes.

Q. That is where the Association's activities were recreational in character; is that right? [335]

A. Yes.

Q. This vote was taken before April; wasn't it?

A. Yes.

Mr. Cannon: That is all.

Redirect Examination

Q. (By Mr. Ryan): Mr. Wiley, with reference to the meetings that you attended as a director of

(Testimony of Lawrence M. Wiley.)

this so-called Recreation Association, you say at one of those meetings these directors voted to change the name from Recreation Association to Cannon Employees' Association?

A. Yes, sir, that was the last meeting we had that I participated in.

Q. That you attended? A. Yes.

Q. And it was a vote taken by the directors of the Recreation Association that changed the name over from Recreation Association to Cannon Employees' Association; is that right?

A. That is right.

Q. After that you resigned; is that right?

A. Yes.

Q. Did any of the others resign?

A. I believe Harry Dean did, but I wouldn't swear to it.

Q. Ned Mandella continued on?

A. As president.

Q. He was president of the Recreation Association when you [336] were a director of it?

A. Yes.

Q. After you voted a change, to change the name over to Cannon Employees' Association he continued as president? A. That is right.

Q. Without any further election; is that right?

A. Yes.

* * * *

Q. (By Mr. Ryan): The other directors of the Recreation Association, with the exception of yourself and possibly Dean who may possibly have re-

(Testimony of Lawrence M. Wiley.)

signed too, according to your memory, the other ones continued over as directors of the C.E.A. after your vote to change the name?

A. Yes, they added a few more to it.

Q. How were they added, do you know?

A. Ned Mandella just appointed them.

Q. To fill your vacancies? A. Yes.

Q. Now, you also testified about attending some meetings in the early stages there while you were a director of the so-called Recreation Club, in which you took part in the preparation of the articles of incorporation; is that right?

A. Yes, sir. [337]

Q. And you had an attorney by the name of Lewis? A. Joseph Lewis.

Q. He was in on these meetings to assist you?

A. Yes.

Q. Who selected him? A. Ned Mandella.

Q. Ned Mandella? A. It was his lawyer.

Q. It was his lawyer? A. Yes.

Q. He brought him into the meeting; did he?

A. Yes.

Q. When you say he was his lawyer, what do you mean by that?

A. Well, Mandella had had other business with him.

Q. That was your understanding of it?

A. Yes.

Q. Did Lewis handle the legal details of having the organization incorporated?

A. Yes, he did.

(Testimony of Lawrence M. Wiley.)

Q. And was there only one incorporation so far as you know? A. As far as I know.

Q. Now, did you subsequently receive the articles of incorporation for your signature and the signature of the other directors of this Recreation Association before they were [338] filed with the Secretary of the State of California? A. Yes.

* * * *

Mr. Ryan: I think it is a matter we can stipulate to, Mr. Cannon, that they were filed with the Secretary of State of the State of California.

Mr. Cannon: I assume they were. They were filed, weren't they, Mr. Wiley?

The Witness: Yes, sir.

Q. (By Mr. Ryan): And you signed the articles of incorporation; did you? A. Yes, sir.

* * * *

[339]

Q. (By Mr. Ryan): Mr. Wiley, prior to the first Labor Board election, which was held in the plant—we are in agreement, I think it was held on September 9, 1941. Do you recall that some loud speakers were installed at the plant?

A. There were loud speakers placed on the outside of the plant, but they were also placed on the inside. That was at least two months before the strike was held.

Q. Did they remain on the outside of the plant?

A. They weren't put on the outside of the plant until just before the strike. They were on the inside two months before [340] the strike.

Q. Where were those located that were placed outside the plant? A. On top of the building.

(Testimony of Lawrence M. Wiley.)

Q. The top of the building? A. Plant 2.

Q. With respect to the street, which side of the building were they on? Were they facing the street?

A. They were facing the street, on the west side.

* * * *

[341]

Q. (By Trial Examiner Batten): There is a question. I notice I have a note here. You participated in the conference in which the board of directors decided to change the name? A. Yes.

Q. Was Mr. Lewis present at that meeting?

A. Yes.

Q. Would you mind telling me the discussion that was had at the meeting, why the name was to be changed? What was the purpose of it?

A. To keep out the C.I.O.

Q. Tell me the discussion that took place at the meeting. Who expressed that view? [344]

A. Mandella and Spencer Messick, he expressed the same opinion. And we all at that time agreed to sign over the name and make it into the C.E.A., so they went ahead and did it.

Q. What do you mean to change it over into the C.E.A.? What was the difference in the Recreational Association and the C.E.A.? What was the difference between them? A. It is a company union.

Q. I am asking you what the difference was between the Recreational Association and the C.E.A., except for the name?

A. There was a lot of difference. One was for recreation and the other was brought up to keep out the C.I.O.

Q. How was it to keep out the C.I.O.?

(Testimony of Lawrence M. Wiley.)

A. By a union affiliation.

Q. Well, you mean that you discussed there that night the necessity for having a labor organization?

A. That is right.

Q. And was it the thought of the board of directors there that night, when you organized the C.E.A., that you were then laying the foundation for a labor organization? A. Within the plant, yes, sir.

Q. Within the plant? A. Yes.

Trial Examiner Batten: I have no further questions.

Mr. Cannon: That is the first discussion that occurred at all at any of these meetings about a labor organization? [345]

The Witness: That is right.

* * * *

Trial Examiner Batten: I will ask the witness. Was there any other change made except in name?

The Witness: Not to my recall.

Trial Examiner Batten: Did you adopt any new by-laws?

The Witness: I resigned right after that.

Trial Examiner Batten: Up to the time you resigned?

The Witness: No, sir.

Trial Examiner Batten: The only change you know of up to the time you resigned was the change in the name; is that right?

The Witness: That is right.

* * * *

[346]

CLARENCE JOSEPH ARMANT,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): Will you state your full name, please, Mr. Armant?

A. My name is Clarence Joseph Armant.

Mr. Ryan: I don't have the complaint before me, Mr. Trial Examiner. How is he listed?

Trial Examiner Batten: Clarence only.

Mr. Cannon: It can be amended, so far as I am concerned.

Trial Examiner Batten: It may be amended then to read as the witness has indicated.

Mr. Cannon: Yes, that is correct.

Q. (By Mr. Ryan): Mr. Armant, what is your address? A. 3818 South Hill Street.

Q. Were you ever employed by the Cannon Manufacturing Corporation? A. I was.

Q. When did you begin to work for that organization? [350] A. I began on May 23, 1941.

Q. What was your first job with the company?

A. I was hired as an assembler.

Mr. Cannon: Assembler?

The Witness: Yes.

Q. (By Mr. Ryan): In the assembly department? A. Yes.

Q. Who was your foreman?

A. Glen McChung.

Q. McChung? A. Yes.

(Testimony of Clarence Joseph Armant.)

Q. About how long did you stay on that job?

A. I stayed on that job several weeks; I don't know.

Q. Then were you transferred to some other job?

A. Yes, I was transferred from there into the sand blast department.

Q. How long did you stay in that department?

A. I stayed there several months.

Q. Who were you under there? Who was your foreman?

A. Glen McClung.

Q. Then were you transferred from the sand blast to some other job?

A. Yes, I was transferred from sand blast to the drill presses.

Q. Who was your foreman there? [351]

A. Glen McClung.

Q. Was he over all these operations?

A. He was over this department, department 11, yes.

Q. The head of all these operations you have related?

A. Yes.

Q. From the drill presses were you transferred to some other job?

A. I was transferred to a lathe.

Q. How long did you continue on the lathe?

A. I stayed there until I was discharged.

Q. When was that, about?

A. My discharge was about the middle part of September, I think, around the 15th, of 1942.

Trial Examiner Batten: You have the record there. Was it on the 15th?

Mr. Cannon: I will find out.

(Testimony of Clarence Joseph Armant.)

Mr. Wilcox: The first discharge was May 15, 1942. The final discharge was on 9-15-42.

* * * *

Q. (By Mr. Ryan): Now, Mr. Armant, all of the time that you were employed, was your foreman Mr. McClung, Glen McClung? [352]

A. I don't think he was, no. I think he was transferred on the day shift the last part of the time I worked there. I don't remember how long he was my foreman. I know I had two foremen while working there. One was McClung and the other one, I don't recall his name.

Trial Examiner Batten: Was the second foreman there toward the end of your employment?

The Witness: Yes.

Q. (By Mr. Ryan): About how long were you under this other foreman before your final termination? A. I don't remember exactly how long.

Q. A matter of months?

A. It was a matter of months, I think.

Q. After you began your employment with the company did it come to your attention there was an organization in the plant by the name of Cannon Employees' Association?

A. Yes. I was approached by Ned Mandella, and he asked me to join up.

Q. About how long had you been working when Ned Mandella first approached you about this Employees' Association?

A. Well, I had been working—I don't know exactly how long I had been working.

Q. Approximately, as best you can recall.

(Testimony of Clarence Joseph Armant.)

A. Several weeks, anyway.

Q. Where were you on the occasion that Mandella brought up [353] the subject of Cannon Employees' Association?

A. I was working. I think I was in the sand blast department then.

Q. Was it during your working hours there at the sand blast? A. Yes.

Q. Did Mandella come up to you while you were working? A. Yes.

Q. Was he alone? A. He was; yes, he was.

Q. Did you have a conversation with him?

A. I told him—

Mr. Cannon: May I have my running objection on the ground it is hearsay.

Trial Examiner Batten: Yes. The question is, did you have a conversation with him at that time he talked to you, and did you talk to him?

The Witness: Yes.

Q. (By Mr. Ryan): What did he say to you?

A. He asked me to join the Association that they had in the plant and be with the rest of the workers. I told him no, I had already joined the C.I.O.

Q. Was it the United Electrical, Radio and Machine Workers you had joined for the C.I.O.?

A. Yes.

Q. What was the rest of the conversation, if any?

A. That is all there was. He walked away.

Q. Do you know whether he had any cards with him at the time for this Association?

A. I didn't notice any cards, no.

(Testimony of Clarence Joseph Armant.)

Q. Do you know where he was employed in the plant at that particular time?

A. No, I did not even know him.

Q. You didn't know who he was?

A. I just knew he was Mandella and he was at the head of the union, C.E.A., that they had there.

Q. That is all the information you had about him at that time?

A. Yes.

Q. Did you know he didn't work in your department?

A. Well, I didn't see him in my department. I was on the night shift, the swing shift, and I hadn't seen him working during the time I was working. I took it for granted he wasn't working there.

Q. Now, after that were you approached by him again?

A. Well, I had several meetings with Mandella, but not in the plant.

Q. After that?

A. Later on, yes. Later on, as time went by.

Q. About the Association?

A. Yes, about the Association. [355]

Q. Did he come to you or did you go to him about it?

A. Well, he wanted me—he told me he had some charges against me that several of the workers in the plant had made, affidavits against me that I had made false statements about the C.E.A. and he wanted me to appear in answer to the charges.

Q. I see. Before we get to that point, when did you join the United Electrical, Radio and Machine Workers?

(Testimony of Clarence Joseph Armant.)

A. I joined it two or three weeks after I started to work at Cannon's.

Q. Did you wear any evidence on your person that you were a member of that organization?

A. I wore a badge at all times. After I joined, about two weeks later, I was elected shop steward and I wore my shop steward badge.

Q. A C.I.O. shop steward badge?

A. It was C.I.O., yes.

Q. Were you elected at a C.I.O. meeting?

A. Yes.

Q. Where was the meeting held?

A. Let's see, I don't recall whether the first meeting was at—we moved around. We had three or four different meeting places. I just can't remember exactly where the first one was.

Q. Around town here some place, anyway? Around Los Angeles? [356]

A. Yes, it was at some place they had rented. I can't recall exactly where.

Q. Some meeting hall the C.I.O. had rented?

A. Yes.

Q. In Los Angeles? A. Yes.

Q. Now, did McClung, your foreman, ever say anything to you about your C.I.O. affiliations?

A. Yes, he did tell me once—

Trial Examiner Batten: Let's find out where this was and what time it was.

Q. (By Mr. Ryan): Approximately when was that?

A. It was right after the election he told me not

(Testimony of Clarence Joseph Armant.)

to wear the badge any more. He said, "The election is over." He says, "You better join the C.E.A."

And he had a pencil and he was knocking on the steward badge I had on, and he knocked it on the floor and I picked it up.

And I told him I joined it when I thought it was the best time to do so.

Mr. Cannon: May I have an objection to that conversation with McClung, too?

Trial Examiner Batten: Yes.

Q. (By Mr. Ryan): Did that conversation take place in the shop? [357]

A. In the shop during working time, yes.

Q. During your working time? A. Yes.

Q. Was any one present, other than you and McClung at that particular time?

A. No, just him and I.

Q. You were at your working place, were you, in the shop? A. Yes.

Q. Now, after the National Labor Relations Board election, which was held on or about September 9, 1941, did you thereafter at any time join the C.E.A.?

A. Yes, I did, right after the election I joined.

Q. Was it after the election or after the C.E.A. contract with the company that was entered into that you joined?

A. Well, it was sometime after the election. I don't remember how long, but I know it was after the election.

Q. Did you at any time thereafter, after you did

(Testimony of Clarence Joseph Armant.)

join the C.E.A., run for an election as a member of the board of directors of the C.E.A.?

A. Yes, I did.

Q. When was that, about?

A. That was several months after the first election.

Q. After the National Labor Relations Board election? A. Yes.

Mr. Cannon: That is after several months after September [358] 9, 1941, I assume?

The Witness: Yes.

Q. (By Mr. Ryan): How was the nomination effected, so far as you were concerned?

A. I was nominated, and I would say there were about 16 of us nominated, and myself and Floyd Cate got the majority of the votes. And we had a run-off election between Floyd Cate and myself.

Q. I see. Was there a vacancy on the board at the time? A. Yes.

Q. Can you tell us how the election was conducted?

A. Well, we had the election in the cafeteria on the plant's property, in the plant's cafeteria. I did not work that day. I stayed at the ballot box and I counted the ballots.

Trial Examiner Batten: Was that the final election, the run-off election you were telling us about, or was that the first one?

The Witness: That was the run-off election.

Q. (By Mr. Ryan): Where was the first election held?

A. The first election was held in the cafeteria, too.

(Testimony of Clarence Joseph Armant.)

Q. How far apart were the two elections, about? How much time elapsed between the first election and the run-off election? A. I really don't know.

Q. Could you estimate it, according to your recollection?

Trial Examiner Batten: Was it a week or ten days or two weeks or a month?

The Witness: I can't. I really don't know.

Q. (By Mr. Ryan): The first election was also conducted in the cafeteria, as I understand; is that right? A. Yes.

Q. How long did the polls remain open? How long did the voting continue?

Mr. Cannon: You mean in the final election?

Q. (By Mr. Ryan): On the first election.

A. The first election?

Q. Yes.

A. I don't know. I understood that every one working in the plant had a chance to vote. There were three shifts then. So I reckon the ballot box stayed open about eight or ten hours.

Q. Did you yourself vote in the first election?

A. Yes.

Q. Where did you receive your ballot?

A. Right at the ballot box.

Q. The ballot box was located where?

A. In the cafeteria.

Q. Who gave you the ballot?

A. One of the board of directors. I don't remember exactly [360] who it was.

Q. Did you take part in the counting of the first ballots for the first election? A. No, I didn't.

(Testimony of Clarence Joseph Armant.)

Q. Now, in the run-off election, that was also held in the cafeteria. A. Yes.

Q. Did you receive your ballot in the same way for that election?

A. Well, no, I just walked up to the table because I was out there all the time. And I just picked up a ballot and voted and dropped it in the ballot box; that is all.

Q. Were the ballots there on the table?

A. They were there all the time, yes.

Q. You just walked up and picked one up and marked it? A. Yes.

Q. By the way, were there booths set up in the cafeteria where you marked them in secret?

A. No, no booths.

Q. Where did you mark them?

A. There were tables in the cafeteria. You would sit down at the table and mark it and walk to the ballot box and drop it in.

Trial Examiner Batten: Was there anybody in charge of the ballot box? [361]

The Witness: The board of directors, Ned Mandella, Andy Bereznak, Floyd Cate and myself.

Q. (By Mr. Ryan): Was Bereznak a member of the board of directors at that time?

A. Yes.

Q. Who designated you as a member of the election board on that second election?

A. Nobody did. I just told them I wanted to be there, and I was there; that is all.

Q. When the polls closed and the counting of ballots was done, where was it done?

(Testimony of Clarence Joseph Armant.)

A. We brought the ballots up to Mr. Cannon's conference room and counted them there.

Q. Who brought the ballots up there?

A. We were together.

Trial Examiner Batten: You all went up there with the ballot box; is that it?

The Witness: Yes.

Q. (By Mr. Ryan): What I have reference to is who did go up to count the ballots besides yourself?

A. Myself and Mandella. Bereznak and Cate were there, and one or two others. I don't remember who they were.

Q. Was Cate a member of the board of directors?

A. He was my opponent on the ballot. He was running for board of directors. [362]

Q. About what time of day was this you went up to count the ballots?

A. That was at night, around 11:30 or 12:00 o'clock at night.

Q. Your shift was the swing shift; is that right?

A. Yes.

Q. What were the hours of your working shift at that particular time?

A. I think it was from 3:30 to somewhere around 12:00.

Q. Midnight? A. Midnight, yes.

Q. Had you been off of your shift all during the time that the voting took place? A. I had, yes.

Trial Examiner Batten: How long had you been off? How long was the ballot box there?

The Witness: Well, it had started that noon and

(Testimony of Clarence Joseph Armant.)

I was down at the plant at noon and stayed there until they closed the ballot box that night.

Trial Examiner Batten: You mean from 12:00 o'clock noon until about 11:00 or 12:00 at night?

The Witness: Approximately that time, yes.

Q. (By Mr. Ryan): This Floyd Cate, I believe you mentioned, was your opponent?

A. Yes, sir. [363]

Q. Where did he work?

A. He was an inspector in the plant. He worked on the day shift.

Q. What were the hours of the day shift?

A. They worked from around 7:30 to 3:30.

Q. In the afternoon? A. Yes.

Q. Did he work that day during the time that the polls were open, or did he stay in there at the election voting place?

A. He had been there and he would come and go. I don't know if he was working or what he was doing.

Q. This Ned Mandella, do you know when he was working in the plant regularly, what shift he worked on?

A. Well, when he was working there he worked the day shift.

Q. Was he there present at the voting all of the time you were?

A. He was there, and then he would go off and come back.

Q. In and out? A. Yes.

(Testimony of Clarence Joseph Armant.)

Q. Now, also with respect to Bereznak, what shift did he work?

A. He was on the day shift most of the time.

Q. I am talking about the particular day of this election.

A. Oh. I think he was on the day shift.

Q. Was he one of the election committee? [364]

A. He was there watching the box, ballot box, yes.

Q. Was he there all of the time you were there?

A. Yes.

Q. Now, as a result of that election you went up and counted the ballots. Did you win membership on the board of directors or were you defeated?

A. I was defeated. [365]

* * * *

Q. (By Mr. Ryan): I believe you stated that the ballots of the election for board of directors were counted in the office; is that right?

A. In the Conference Room.

Q. There at the plant?

A. At the Cannon plant, yes.

Q. Were the employees then notified as soon as you had finished counting, as to the results of the election?

A. I don't know if they were or not. I left immediately and went home.

Q. Now, Mr. Armant, did you have occasion to have some dealings with an Army inspector by the name of Brown while you were employed by the company? A. Yes, I did.

(Testimony of Clarence Joseph Armant.)

Q. About when was that?

A. Well, that was around the month of June, 1942, somewhere in the month of June. [369]

Mr. Cannon: June, 1942?

The Witness: Yes.

Q. (By Mr. Ryan): Was this Inspector Brown an Army inspector?

A. Yes. He was very friendly with me——

* * * *

Q. (By Mr. Ryan): Did he have an office in the Cannon plant at the time?

A. He had an office in the Cannon plant, yes.

Q. Sometime about the month of June, 1941, you had a conversation with him; did you?

A. Let's see, 1941. I think it was in 1942.

Q. 1942; I am sorry.

A. 1942, yes. He told me that there was some rumors around the plant about workers having to pay \$5.00 to \$10.00 for their jobs from the Humble Brothers Employment Office, and he asked me if there was any truth to it.

I told him yes, I had heard the same thing. I said, "In fact, I could give you a receipt, photostatic copies of the receipts that workers are being sent down here by [370] the employment office."

He said, "I would appreciate it if you would." I got two or three photostatic copies of receipts that these workers were paying for their jobs and gave them to him.

He says, "Well," he says, "the State Employment sends people down here and they can't get a

(Testimony of Clarence Joseph Armant.)

job," he says, "but everybody it seems that pays for their jobs come out here and go to work."

I said, "Well, here it is." Just as we handed these receipts Floyd Cate passed by and looked in and saw us.

Trial Examiner Batten: Who?

The Witness: Floyd Cate, a member of the Board of Directors.

Q. (By Mr. Ryan): Of the Cannon Employees Association? A. Yes.

Mr. Cannon: Find out who was there with him.

Q. (By Mr. Ryan): Who was there with you besides Mr. Brown?

A. A worker by the name of Harmon Fellows.

Q. Harmon Fellows? A. Yes.

Q. Was he active with you in investigating this matter of the employment? A. Yes, he was.

Q. Was he also a C.I.O. man?

A. He was a C.I.O. shop steward. [371]

Q. You at that time were active in the C.I.O., too? A. I was a C.I.O. shop steward, also.

Q. Now, on the occasion when you brought in the receipts, as you have mentioned in your testimony, to Brown, you say Floyd Cate saw you?

A. Yes.

Q. Can you tell us or not whether Ned Mandela was involved in any way with those receipts?

A. Well, there was a sign on the employment receipts I had that said, "Clear with Ned Mandela," and right at the bottom of the receipt they had his name signed.

(Testimony of Clarence Joseph Armant.)

Mr. Cannon: Do you have one of those?

Q. (By Mr. Brown): By the way, at that time was Ned Mandella the president of the Cannon Employees Association? A. Yes, he was.

Mr. Ryan: Miss Reporter, will you mark this document as Board's exhibit next in order for identification, please?

(The document referred to was marked as Board's Exhibit No. 36, for identification.)

Q. (By Mr. Ryan): I show you, Mr. Armant, what has been marked as Board's Exhibit 36 for identification, and ask you to tell us what that is, if you know.

A. This is one from the Arnold Employment Agency. There were several of the agencies. The Humble Brothers was one.

Mr. Cannon: Humble Brothers? [372]

The Witness: I think it is Humble Brothers. I know there was more than one of the agencies, there were several of them.

Q. (By Mr. Ryan): How did you get them?

A. We asked the new workers that were coming in the plant how they got their jobs. They told us through the employment offices. That is how we found out.

Q. Did they give you the receipts?

A. Some of them gave us the receipts, yes, and some of them kept them.

Q. Is this one you got from a new employee there at the plant (incidating)? A. Yes.

(Testimony of Clarence Joseph Armant.)

Q. Did you turn this document, Board's Exhibit 36, over to Mr. Brown?

A. I gave that to Mr. Brown, yes.

Mr. Ryan: Now, I offer Board's Exhibit 36 for identification, in evidence.

Mr. Cannon: I have no objection except that it is hearsay, in the strictest sense. I just want to note the objection at this time. I have no objection otherwise to its going in.

Trial Examiner Batten: It will be received.

(The document heretofore marked as Board's Exhibit No. 36, for identification, was received in evidence.) [373]

Q. (By Mr. Ryan): Mr. Armant, after you had been seen going in to talk to Mr. Brown, or while you were in there talking to Mr. Brown turning these receipts over to him, of which Board's Exhibit 36 is an example, did anyone come into the office while you were in there with Mr. Brown?

A. Well, for some reason Floyd Cate saw us. I don't remember exactly if he came in the office or if he passed by. As I recollect now, I could be sure he came in the office while we were in there. That is how he happened to see us. He either came in the office or he passed by, one of the two. I know it is unusual to have two answers to one question, but it has been so long, you know, and you can't remember every little incident that happened.

Q. Then, Mr. Armant, did you within a few days receive any notice from the Cannon Employees' Association?

(Testimony of Clarence Joseph Armant.)

A. Well, several days later, I think,—sometime after that—I received a letter from the C.E.A. stating that due to unpleasant circumstances——

Mr. Cannon: Wait a minute.

Q. (By Mr. Ryan): Wait a minute. All I wanted was a yes or no answer.

A. Yes, I did.

Mr. Ryan: Will you please mark this document as Board's exhibit next in order for the purpose of identification? [374]

(The document referred to was marked as Board's Exhibit No. 37, for identification.)

Mr. Ryan: I show Board's Exhibit 37 for identification to counsel.

Miss Reporter, will you please mark this document as Board's exhibit next in order?

(The document referred to was marked as Board's Exhibit No. 38, for identification.)

Q. (By Mr. Ryan): Now, Mr. Armant, I show you what has been marked as Board's Exhibit 37 for identification, and ask you to tell us if you ever saw it before and how you happened to see it?

A. This is the letter, or copy of the letter I received—no, this is the original letter I received on August 5, 1942; I received this letter.

Q. You received it from Mr. Ned Mandella, president of Cannon Employees' Association: is that right? A. Yes.

Q. The letter is dated July 31, 1942.

A. Yes. [375]

(Testimony of Clarence Joseph Armant.)

* * * *

Q. (By Mr. Ryan): Now, Mr. Armant, I believe you testified did you, that Mr. Harmon Fellows, another C.I.O. shop steward, was also with you at the time that you went to Brown's office.

A. Yes, I did.

Q. Did he, to your knowledge, also receive a like letter from Mr. Mandella?

A. He said that he received a letter, too.

Mr. Ryan: Will counsel stipulate that Board's Exhibit 38 for identification is a letter addressed to Mr. Harmon Fellows from Ned Mandella and involves the same matter, apparently?

Mr. Cannon: Yes, I will so stipulate, without waiving my objection to its being hearsay so far as the respondents are concerned.

Mr. Ryan: I offer Board's Exhibits 37 and 38 for identification in evidence.

Trial Examiner Batten: Do you have any duplicates of those?

Mr. Ryan: Not as yet. I just got these letters.

Trial Examiner Batten: They will be received.

(The documents heretofore marked as Board's Exhibits Nos. 37 and 38, for identification, were received in evidence.) [376]

[Printer's Note:] Board's Exhibit No. 37 is set out in full at page 691 of this printed Record.

Q. (By Mr. Ryan): Mr. Armant, I notice in the letter which you received, which has been re-

(Testimony of Clarence Joseph Armant.)

ceived in evidence, that you were asked to appear on August 4th, I believe, for a hearing.

A. Yes.

Q. You say you did not receive the letter until August 5th, which would be the day after?

A. Yes.

Q. What did you do in connection with the letter after you received it from the company?

A. As soon as I received the letter I immediately called Mr. Ned Mandella and asked him why did he ask me to report due to unpleasant circumstances.

I said, "What unpleasant circumstances have arisen?"

He said, "You will have to come out here and find out."

I said, "I am not too late, am I?"

He said, "You are a day late." He says, "But maybe we can have you come out a little time later."

I said, "What do you mean by a little time later?"

He said, "You be out here at 2:00 o'clock on August 7th and you will find out."

Q. Where did you, Mr. Armant, have this discussion with Mr. Mandella you have just testified to?

A. Over the telephone.

Q. Over the telephone. Where were you calling from?

A. The corner phone, the corner of my house.

Q. Where were you calling Mandella?

A. At the C.E.A. office.

(Testimony of Clarence Joseph Armant.)

Q. Had you known Mandella quite well up to that time? A. Yes.

Q. So you knew you were talking to Mandella?

A. I knew I was talking to Mandella; I knew his voice.

Q. Was that conversation on the day you received the letter?

A. On the 5th of August, 1942.

Q. On the 7th of August did you report out at the C.E.A. office? A. I did.

Q. About what time of day?

A. 2:00 o'clock.

Q. In the afternoon? A. Yes.

Q. Was anyone else there at the time?

A. Well, when I first got there Ned Mandella and Pete Vitale and Mr. Clark was there.

Q. Who was Mr. Clark.

A. He was one of the board of directors.

Q. Of the Cannon Employees' Association?

A. Yes.

Q. And this Mr. Vitale, was he also a member of the board of directors of the C.E.A. at that time?

A. Yes. I had taken a friend of mine with me. [378]

Q. Who was that?

A. His name was Joe Ferns.

Q. Was he an employee of the company?

A. He was an employee of the company, yes. And as soon as I arrived Mandella got on the telephone and he called the plant and he asked for Mr. Floyd Cate and Mr. Andy Bereznak and La-

(Testimony of Clarence Joseph Armant.)

Guerre Drouet. The three of them were members of the boards of directors, but this LaGuerre Drouet was the foreman of the shop; he was a foreman in the shop.

Q. At that time? A. At that time, yes.

Q. He called the plant. Do you know what he said? Were you there listening to the conversation?

A. He said, "Armant is over here. Come on over. We are going to start." He only made one telephone call, and the three of them came over.

Q. Were they over there within a few minutes?

A. I would say in about 10 minutes they came over.

Q. That would be shortly after 2:00 o'clock in the afternoon; is that right?

Q. To your knowledge were they working on the day shift at the time?

A. I am pretty sure they were, yes.

Q. What time did the day shift end then?

A. At 3:30. [379]

Q. 3:30 in the afternoon? A. Yes.

Q. This was shortly after 2:00 o'clock, however?

A. Yes.

Q. That this matter was taking place that you are testifying to? A. Yes.

Q. After these three directors came over from the plant, then what happened, if anything?

A. Well, then we were in a private room and they closed the door and Mandella sit at the desk, and he started reading a lot of papers, different affidavits he said he had against me.

(Testimony of Clarence Joseph Armant.)

Q. Up to that time, or up to the particular moment when he started to read these affidavits against you, allegedly against you, had you received any notice from C.E.A. as to what you were being charged with, other than that letter now in evidence from Mandella?

A. Nothing more than that. No, I did not.

Q. Proceed.

A. Well, he accused me, the first thing, of signing up workers on company time in the company's rest room. Then he accused me of giving Mr. Brown information regarding the employment of the plant.

Q. That is Inspector Brown? [380]

A. Inspector Brown, yes. Then he accused me of belonging to the Communist party. And he also accused me of making false statements against the C.E.A.

Q. Did he explain what those statements were?

A. Well, he didn't say. He just said I made false statements against the C.E.A. And he also accused me of signing up George Fish in the C.I.O. on company time. George Fish was in the Army at the time, but the time they claimed I signed him up in the C.I.O. he was on the board of directors for the C.E.A. I told them I wouldn't do anything like that, sign up a board of director member on company time.

I tried to get time to get my witnesses and all together, but they wouldn't let me go out and get witnesses or anything. They wouldn't even let me answer the questions in my own defense, before they

(Testimony of Clarence Joseph Armant.)

all said, "Well, we will just have to fire him, that is all."

Trial Examiner Batten: Was this foreman there during this proceeding?

The Witness: Yes, he was the one that accused me of belonging to the Communist party.

Mr. Cannon: Who?

The Witness: La Guerre Drouet. He said, "Didn't you belong to the Communist party?"

Mandella said, "Yes, he belongs to the Communist party."

Floyd Cate says, "Yes, he has a membership card on him now. [381] Let's search him and we will see if he belonged to the Communist party."

What could I do? I was there with my friend and myself. They had me outnumbered, and I kept quiet.

Mr. Cannon: I object to his argument in the matter.

Trial Examiner Batten: You tell us what he said.

Mr. Cannon: Do I understand my objection runs to all this testimony in the absence of the company?

Trial Examiner Batten: Yes. If the foreman were present I suppose you still would object to it. But you may have a continuing objection.

Mr. Cannon: There was no authorization for his doing unlawful things.

Q. (By Mr. Ryan): Mr. Armant, you were told that you couldn't bring any witnesses in.

A. They didn't want to leave this fellow stay

(Testimony of Clarence Joseph Armant.)

that I had brought over. I refused to stay myself unless he stayed in. And they finally decided to leave him stay there if he would be quiet.

Q. How long did this proceeding last?

A. I would say over an hour.

Q. Did anything else take place, other than what you have related already, that you can recall, this reading of charges against you and making of statements such as you have already testified to? [382]

A. That is all that happened there.

Trial Examiner Batten: What other part, if any, did this foreman take in this proceeding? You told us some of the things he said. Did he take any other part in the proceeding?

The Witness: Well, he was there. He was on the board of directors. He had a right to be there.

Trial Examiner Batten: You mean he was on the board of directors?

The Witness: Yes.

Trial Examiner Batten: You say he was a foreman?

The Witness: Yes.

Trial Examiner Batten: Well, what was he, a foreman or a leadman?

The Witness: He was a janitor foreman.

Trial Examiner Batten: You mean he was a foreman of all the janitors in the plant?

The Witness: Yes.

Q. (By Mr. Ryan): Was there a vote taken among those directors there at the conclusion of the proceeding, as to what would happen to you?

(Testimony of Clarence Joseph Armant.)

A. Well, there was no vote. They just had told me I was guilty of the charges and I would be discharged.

Q. Did they tell you right there in the proceedings?

A. They didn't say right then I would be discharged, but [383] they said I would be discharged.

Q. Did they tell you that there, that you would be discharged?

A. Yes. I left and went to work that night. A week or two weeks later I was discharged.

Trial Examiner Batten: Who told you there you would be discharged?

The Witness: The President, Mandella, Ned Mandella.

Q. (By Mr. Ryan): Was this Harmon Fellows also called in for a trial at that time?

A. Not at the time I was, he wasn't there.

Q. Now, how long did this proceeding last?

A. Over an hour I would say.

Q. What did you do after it ended, did you leave the room?

A. I left then and went to work.

Q. What time did you report for work?

A. About 3:30.

Q. How long did you continue to work for the company after that, approximately?

A. I would say about ten days or two weeks after.

Q. Will you relate the circumstances of your termination of employment?

(Testimony of Clarence Joseph Armant.)

A. Well, I went to work one afternoon and I think it was around the 12th of September, somewhere there, around the 12th of September, 1942, and my card wasn't in the rack. [384] I didn't know what to think, so I immediately got on the phone at the plant and called up the C.E.A. I called Mandella. I asked him, I told him my card was not in the rack. I said, "What is the matter?"

He said, "Well, you are fired."

So after that I got in touch the next day with the C.I.O. representatives and I told them what happened. And through the Federal Conciliator, Mr. Livingston, sometime later I was re-employed.

Q. Mr. Livingston, the conciliator for the United States Department of Conciliation?

A. Yes.

Q. He was brought into the scene by the C.I.O.; is that right? A. Yes.

Q. Concerning your discharge? A. Yes.

Trial Examiner Batten: Well, when Mandella told you you were discharged, did you go to your foreman?

The Witness: When I got on the telephone and called him up?

Trial Examiner Batten: Yes.

The Witness: No, I couldn't get in the plant. I didn't have a card or anything.

Trial Examiner Batten: Did you go to the gate?

The Witness: Yes, I went to the gate. That is where the cards were.

(Testimony of Clarence Joseph Armant.)

Trial Examiner Batten: Did you talk to the guard there or the person in charge of the gate?

The Witness: I called up the C.E.A. office there and spoke to Mandella, and he told me I was fired.

Trial Examiner Batten: Could you have gotten into the employment office without going through the gate?

The Witness: Yes, I could have.

Trial Examiner Batten: Did you go over there?

The Witness: No, I didn't.

Q. (By Mr. Ryan): Mr. Armant, to be clear about this occasion when you reported for work and your card was missing, where is that rack?

A. That is just past the guard's desk, outside of the plant.

Q. Outside of the plant? A. Yes.

Mr. Cannon: The card is inside the plant, isn't it?

The Witness: Not at that time they weren't. They were as you go in through the gate, you pass the guard and right in through the gate.

Q. (By Mr. Ryan): This was your time card which you punched at the time clock you are referring to as your card, is that right? [386]

A. Yes. And I was told I was discharged.

Q. Was there a rule that you had to punch your time card before you could walk into the plant, before you came in to work at that time?

A. Yes.

Q. So when you saw your card missing, where did you go to make the telephone call?

(Testimony of Clarence Joseph Armant.)

A. Right in the plant there.

Q. You did?

A. Yes, they had a telephone there.

Q. You called Mandella at the C.E.A. office; did you?

A. Yes. I say in the plant. I meant right in the cafeteria.

Q. There they have a telephone?

A. It was just where the cards were to be punched, right there they had a telephone booth.

Trial Examiner Batten: Was that a pay telephone?

The Witness: Yes, a pay telephone.

Q. (By Mr. Ryan): After you talked to him, you left the plant; did you? A. Yes.

Q. After he had instructed you? A. Yes.

Q. As to what you have testified to?

A. Yes. [387]

Q. What did you do after you left the plant?

A. Well, I think it was a day after—I went home and the day after I got in touch with the C.I.O. and I told them what had happened.

Q. And the C.I.O. brought in Conciliator Livingston, as you have testified?

A. On this case, yes.

Q. Was a hearing held in front of Mr. Livingston about it, do you know; about your discharge?

A. Well, I don't know for sure.

Q. You weren't present?

A. I wasn't present, no. But I was supposed to return back to work.

(Testimony of Clarence Joseph Armant.)

Q. You were reinstated. About how long was it after your discharge then you were reinstated, approximately?

A. I was reinstated and received \$150.00 back pay, so that——

Trial Examiner Batten: How much time did you lose, about?

The Witness: Well, I would say about two weeks, I reckon.

Q. (By Mr. Ryan): And you returned to your job then, and did you get your back pay?

A. I received my back pay, yes.

Q. Now, do you remember the date of your return to work, approximate date?

A. Around the 12th of September, 1942. [388]

Q. Now, so that the record won't be confused, Mr. Armant, you stated you thought you were discharged about the 12th of September. If you returned about the 12th of September it must have been before that that you were discharged.

A. I am sure I returned on the 12th of September, so I must have been discharged about the week or two after August the 7th, 1942. It must have been in the middle of August or the latter part of August I was discharged. I don't remember exactly the exact date.

Q. Well, you returned to work about September 12th or 13th. What shift did you return to work on?

A. I returned on the swing shift.

Q. That is the one you had been working on before?

A. Yes.

(Testimony of Clarence Joseph Armant.)

Q. What department were you working in at that time? A. Department 11.

Q. After you returned to work that day, did any of the other employees come up to you after you had gotten back on the job and make any statements to you?

A. Yes, practically all the employees in my department came up to me and were glad to see me back, and were shaking my hand and patting me on the back, and laughing.

Q. Then about a half an hour after you had been back, do you recall seeing Andy Bereznak and any other member of the board of directors of the C.E.A. walk through your department? [389]

A. Yes, Andy Bereznak and Barnett, I think his name was; he was also a board of director member.

Mr. Cannon: Barnett?

The Witness: Yes. They walked through my department. I noticed them stopping and talking to several workers, and they went on in to the Assembly department. About 10 or 15 minutes later I saw them pass through and they had a string of people following them.

Q. (By Mr. Ryan): By people do you refer to employees?

A. Yes, employees following them. And they went out into the plant cafeteria.

Q. You couldn't see all of that; could you?

A. Well, I could see that, yes, where I was at. And one of the girls named Monna Nye told me they were having a production meeting and they

(Testimony of Clarence Joseph Armant.)

were asked to go out, but they weren't going to go out to it but they were going to stay and work.

The next thing I knew the day superintendent, Superintendent Hawkinson, came up to me and he told me, he says, "The workers in the plant here are out on strike, and the best thing for you to do is go home if you want to cooperate with winning the war and you are all out for production, like you claim to be."

Q. Did he explain why they were striking?

A. Yes, because I had returned to work and they were [390] strictly against me working in the plant.

So I told him, I says, "That is not true." I says, "Those workers are not out there on strike," I says, "they are having a production meeting."

So he says, "Oh, no, it is a strike."

I says, "I will tell you what I will do. Give me a chance to go out and talk to the workers, and I guarantee you every one of them will be back in here working; there is no strike."

Q. Where were these employees supposedly on strike?

A. Out in the plant cafeteria. "Oh, no," he says, "I can't let you do that. You may get in trouble."

I said, "No, I won't get in any trouble." I said, "If I get in any trouble I will take the responsibility. But as far as my starting any trouble I won't do it."

He says, "Well, I still can't leave you go. The best thing you can do is you had better go home."

(Testimony of Clarence Joseph Armant.)

I said, "I am not going home. I am going to keep working." And I was working all the time I was talking to him.

So a little while later he came back and he told me to come in the office. He said, "Bob Cannon is in there and wants to talk to you."

So I went in the office and Bob Cannon said, he says, "Well, the workers are on strike. They don't want you to work in the plant." He says, "You better go home." [391]

I says, "Listen, Bob Cannon, those workers aren't out there on strike. You know as well as I do they are not. Give me a chance to prove they are out there on a production meeting. And give me a chance to talk to them and they will be back to work."

He said, "Listen, I am not going to tell you once more to get out of here. If you don't get out of here I will have you thrown out." And that is when I decided to get off, and I went out.

Q. You left the plant? A. Yes.

Q. By the way, at any time there while Hawkinson was talking to you, or while you were talking to Bob Cannon, did the night superintendent Rollie Thompson come on the scene?

A. Yes. He also came on the scene, but Harmon Fellows—he told Harmon Fellows the same thing, that the workers were out on a strike.

Mr. Cannon: You weren't there when he told Fellows that; were you?

The Witness: Yes, I was. I was there when he

(Testimony of Clarence Joseph Armant.)

told him that, right in the superintendent's office.

Trial Examiner Batten: In your presence?

The Witness: In my presence, yes.

Q. (By Mr. Ryan:) Did Thompson say anything else?

A. Well, they both were talking to us about leaving the [392] plant, Hawkinson and Thompson.

Q. Now, after you left the plant, what did you do?

A. Well, after I left the plant there I got in touch with the C.I.O., the United Electrical, Radio and Machine Workers, and I notified them what had happened.

They got in touch with Mr. Livingston, Federal Conciliator, and I was ordered to return back to the plant to work.

Q. Well, was a hearing held? Was an arbitration hearing held after your discharge?

A. When I returned to the plant, yes.

Q. How soon did you return to the plant after you had been ordered out?

A. About three days later.

Q. About three days later? A. Yes.

Q. Who told you to return to the plant?

A. Well, the Federal Conciliator had notified the union that the C.I.O., that I was supposed to go back to work.

Q. You did report for work then three or four days after you had been discharged?

A. Yes.

(Testimony of Clarence Joseph Armant.)

Q. Then was an arbitration hearing held relative to the matter of your discharge?

A. Well, that is—— [393]

Q. After you got back to work?

A. Then I reported to the plant, I think it was on the 15th, September 15th when I reported to the plant. And I was then notified they were going to have an arbitration.

Q. Right then? A. Right then.

Q. Before you ever got started at your work; is that right?

A. Yes. So I got to the phone and tried to get in touch with the lawyer, to see if the thing was going to be conducted right and I was going to have some chance to bring in witnesses, you know.

Q. What lawyer did you get in touch with?

A. I called Vic Kaplan.

Q. A C.I.O. attorney at that time?

A. Yes. And he came down to the plant, and he talked to Mr. Cannon.

Q. Yes. He wouldn't leave the lawyer stay. He told him it wasn't necessary for me to be represented by an attorney.

Q. Now, before you get any further with that, when you got to the plant there on that day, where did you report?

A. I reported to 3209 Humboldt Street.

Q. But did you punch your card to start into work? A. No.

Q. Were you met there by someone who told you what to do? [394]

(Testimony of Clarence Joseph Armant.)

A. I was just told to go to the Humboldt Street entrance of the plant, that is all.

Q. You were advised that the conciliator had arranged for you to return to the plant that day?

A. Yes.

Q. Did you know there was going to be an arbitration hearing there?

A. No, I did not. If I would have I would have had my attorney there.

Mr. Cannon: I move to strike that out.

Trial Examiner Batten: That may be stricken, the last phrase.

Q. (By Mr. Ryan): When you got to the plant that day, how were you advised that there was to be an arbitration proceedings immediately?

A. I went up to the office there and I told the girl that I wanted to see if I was supposed to come back to work, or something. I don't remember that little incident. Anyway, the girl told me at the desk there that I would have to go upstairs and see Mr. Cannon. So I went up and Bob Cannon was there. He said his father was in the cafeteria eating a sandwich and he would be back in a few minutes; they were going to arbitrate the case. When I found that out I got on the telephone right away and called up the union and asked them to send a lawyer down. [395]

Q. Then as you waited there who else was around there, if anyone?

A. The C.E.A. board of directors. Ned Mandella, Floyd Cate, Mr. Clark; I don't know his first name.

(Testimony of Clarence Joseph Armant.)

And there were one or two others there. Floyd Izsom was there. He wasn't a board of director.

Q. Where were you all waiting? You were waiting there for a few minutes, weren't you, while Mr. Cannon was in the cafeteria having coffee?

A. The C.E.A. was in and out, the C.E.A. representatives were in and out of the conference room, but we waited right on the outside, Fellows and myself.

Q. Harmon Fellows? A. Yes.

Q. He had been told to report there also?

A. Yes.

Q. To make the picture clear now, on the day that you had been ordered out of the plant, when this supposed strike was taking place in the cafeteria, Harmon Fellows also left the plant on that day? A. He was ordered out, also.

Q. In your presence? A. Yes.

Q. When you returned that day, prior to this arbitration hearing, Fellows was coming back with you; is that right? [396] A. Yes.

Q. You both went up to this arbitration hearing room? A. Yes.

Q. Did Mr. James Cannon eventually come up to the conference room? A. Yes, he did.

Q. Did the arbitration meeting get under way?

A. Yes.

Q. Who was the arbitrator?

A. Well, Mr. Cannon and Lt. Commander Powell. I just called these people off by name. I don't know any of them. And Mr. Bockman.

(Testimony of Clarence Joseph Armant.)

Q. Do you know who he was? A. No.

Q. Do you know who he was representing there?

A. I don't know. I don't know who picked him or anything.

Trial Examiner Batten: Did you pick any of these people?

The Witness: No.

Trial Examiner Batten: Who is this Lt. Commander Powell?

The Witness: Well, he had a uniform on. He must have been in service.

Mr. Ryan: I might say he was a Naval man that has to do with production.

Mr. Cannon: Yes. [397]

Trial Examiner Batten: Connected there with the plant?

Mr. Cannon: Not connected with us. He was sent there by the Navy.

Trial Examiner Batten: The Navy has him stationed there?

Mr. James Cannon: He said he was an observer.

Mr. Robert Cannon: He is a Navy consultant of the Navy material at Vernon. He was out on the Navy problems, whenever they came up.

Trial Examiner Batten: You say he acted as an arbitrator?

The Witness: Yes, sure.

Q. (By Mr. Ryan): You sent for your attorney. Did he come down to the hearing?

A. Yes.

Q. Did he remain at the hearing?

(Testimony of Clarence Joseph Armant.)

A. He went in and spoke to Mr. Cannon, and Mr. Cannon told him he couldn't stay.

Q. So he left again; did he? A. Yes.

Q. That was Mr. Kaplan, C.I.O. attorney?

A. Yes, Mr. Kaplan.

Q. Who called the arbitration proceeding to order? A. Mr. Cannon.

Q. Will you tell us then what happened after it got under way, what was said and what was done?

A. Well, Mr. Cannon said, "Well, all right. We are ready to [398] start now. We will take Mr. Fellows first." [399]

* * * *

Q. So you don't know what was going on in there, of course, while Harmon Fellows was in there; you weren't there? A. No, I was not.

Q. Harmon Fellows came out and you were called in to the arbitration proceedings?

A. I was called in, yes.

Q. Who called you in?

A. Mr. Clark. He was a board of directors. I don't remember if he stayed in the conference, at least in the arbitration or if he was out. But he seemed to always call one of us in, like that, notify us to come in.

Q. You went into the hearing room, Mr. Armant, and what happened after you got in there?

A. Well, I was accused of these charges that the C.F.A. claimed they had. They claimed they had affidavits signed against me.

(Testimony of Clarence Joseph Armant.)

Trial Examiner Batten: You mean the same charges as before?

The Witness: Yes.

Q. (By Mr. Ryan): Who read these accusations? A. Mr. Cannon.

Q. James Cannon?

A. Yes. He accused me of signing up workers on company time. He read papers he had there. He said they were affidavits. He said I was smoking in the rest room during working hours. I can't get the whole thing clear. [401]

* * * *

Q. (By Mr. Ryan): As I understand it, you walked out of the hearing finally; is that right?

A. Yes.

Q. Before it was over? A. Yes. [406]

Q. Did you make any statement before you walked out?

A. I said, "If this is the way you are going to conduct anything and not give me a chance to bring any witnesses in or anything, I am going to leave." And I walked out.

Q. Where did you go?

A. Well, I immediately called one of the organizers up and told them what had happened.

Q. C.I.O.? A. Yes.

Q. And what did you do then?

A. Well, then it was late at night, it was about 9:00 or 10:00 o'clock, I think. I went home and the next thing I knew was the Union had talked with Mr. Livingston and I was discharged.

(Testimony of Clarence Joseph Armant.)

Q. You were advised of that? A. Yes.

Q. That the so-called arbitration proceeding was not in your favor; is that right? A. Yes.

Trial Examiner Batten: The union told you that? Who did you talk to at the union?

The Witness: Well, Al George was organizer then for the C.I.O., and I am pretty sure that is who it was.

Q. (By Mr. Ryan): Now, did Livingston, Conciliator Livingston, come to you personally after that arbitration hearing was over [407] and talk to you?

A. No, I think we went to Livingston's office.

Q. You say "we." Whom do you have reference to?

A. We had Al George and myself and one or two others of the organizers and some of the workers from the plant who went down to protest, I think it was. And he had told us there wasn't anything he could do, that the matter was all settled.

Q. Now, thereafter did you or the C.I.O. take any further action regarding your discharge?

A. Yes.

Q. First of all, did you receive any official notice from the company as to the termination?

A. No, no official notice.

Q. Did you receive any communication whatever from the company after that arbitration proceeding, other than what you got through Livingston?

A. No, I did not.

(Testimony of Clarence Joseph Armant.)

Q. Did you or the C.I.O. take any further action respecting that discharge?

A. The C.I.O. took further action.

Q. Will you tell us what the nature of that action was?

A. Well, they appealed the case to the courts.

Q. To the California courts?

A. Yes, the California State court. Judge Willis was the [408] Judge. And the Judge ruled in my favor.

* * * *

Q. (By Mr. Ryan): Thereafter you worked for the company no more; is that right?

A. No more, that is right.

Q. You haven't worked for them up to this time?

A. That is right. [409]

* * * *

Q. (By Mr. Ryan): Mr. Armant, after this trial before Judge Willis, did you thereafter within a day or so or a few days report back to the plant for your job?

A. Yes, I did.

Q. Whom did you see at the plant?

A. I went to the personnel office and saw Mr. Wilcox.

Q. Did you have a conversation with him?

A. I told him that——

Q. Did you have a conversation with him?

A. Yes.

Q. Was anyone present other than you and Mr. Wilcox?

A. That is all, Mr. Wilcox and myself.

(Testimony of Clarence Joseph Armant.)

Q. Will you tell us what was said?

A. Well, I told him that I was reinstated, the courts had ruled in my favor and I was ready to go back to work.

Judge Willis, you are referring to Judge Willis' trial? A. Yes, Judge Willis.

Q. What did Mr. Wilcox say?

A. He told me to wait a while. He didn't give me no answer there. I waited about 30 or 45 minutes and he came back and he told me nothing doing.

Q. Did he say anything other than nothing doing?

A. I went there for the job and he said, "No, nothing doing." [410]

Q. Did you see anybody in connection with the C.E.A., connected with the C.E.A. about your reinstatement?

A. I went back to the C.E.A. and it was understood I was a member of the C.E.A.

Q. What do you mean "it was understood?"

A. I told them that I had won the case and I was back there in good standing. They said yes, I was. And I tried to get them to call the company up and put me back to work, but they wouldn't do it.

Trial Examiner Batten: You say you were back in good standing. Was this action you brought in court for reinstatement in the C.E.A.?

The Witness: That is the way the courts said, that I was a member in good standing in the C.E.A.

(Testimony of Clarence Joseph Armant.)

Q. (By Mr. Ryan): Had you been paying your dues in the C.E.A. all the time.

A. Yes, I had been paying my dues all the time.

Q. You went back to them. Whom did you talk to at the C.E.A.?

A. Well, I talked to Andy Brezenak.

Q. Brezenak? A. Yes.

Q. At that time was he an officer of the C.E.A.?

A. He was a voted director, board of directors. He was one of the officials. [411]

Q. Where did you see him?

A. One or two days after the trial.

Q. Where? A. In the C.E.A. office.

Q. Across the street from the Cannon plant?

A. Yes.

Q. Was anyone present when you talked to him?

A. His sister was there?

Q. His own sister? A. Yes.

Q. Was she working for the company?

A. She was working for the C.E.A. office.

Q. Was she there while you were talking to him?

A. Yes, she was there.

Q. Did she take any part in the conversation?

A. No, I don't think she did.

Q. All right. What did you say to Brezenak and what did he say to you on that occasion?

A. I said, "The courts have ruled in my favor. I am a member in good standing." I said, "I am ready to go back to work."

He said, "Yes, you are a member in good standing."

(Testimony of Clarence Joseph Armant.)

I said, "How about calling the company and getting me my job back?"

"Well, I can't do that." So I went over to the company [412] myself.

Q. That is when you saw Wilcox? A. Yes.

Q. After you talked to Mr. Wilcox, as you have testified, what did you do then, leave his office?

A. Yes.

Q. Have you had any further contact with the company or the C.E.A. since then?

A. No, I haven't.

Q. Have either the company or the C.E.A. notified you at any time since then they would take you back to work? A. No they haven't.

Mr. Ryan: You may cross-examine.

Cross-Examination

* * * *

Q. Now, getting back to this matter of the talk you had with Mr. Wilcox. That was after you came over from the C.E.A. office; wasn't it?

A. Yes. [417]

Q. What did you tell Mr. Wilcox, again?

A. "I am back for my job," I told him.

Q. Tell me what you told him?

A. I think I said, "Mr. Wilcox, I won the case in court and I am back for my job."

Q. What else?

A. And I think that is about all I said.

Q. What did he say?

A. He said, "Wait a minute." And he didn't say

(Testimony of Clarence Joseph Armant.)

yes or no. He went off and about 45 minutes later he came back and said, "No, nothing doing."

Q. What did you say?

A. I said, "Well, all right." And I walked out.

Q. Was anything else said by either of you?

A. That is all. [418]

* * * *

Q. (By Mr. Cannon): Getting back to this business about the cafeteria, when these people were called in there, you say that something was said about a production meeting? A. Yes.

Q. That was the day you returned to work; wasn't it? A. Yes.

Q. You saw this group from the assembly department going in there? A. Yes.

Q. And some of the directors of the C.E.A. were with them? A. Yes.

Q. And then you remember they went in there, in the cafeteria, and remained how long, Mr. Armant; do you know?

A. I would say about one hour, maybe more.

Q. All right. During this one hour period you were up to Mr. Bob Cannon's office; were you?

A. Did I go up there?

Q. Yes.

A. No, I wasn't up in Mr. Bob Cannon's office.

Q. When was it you went up to Bob Cannon's office and you say he told you to get out?

A. I was never in Bob Cannon's office.

Q. I beg your pardon. It was while these people were in the cafeteria you talked with Bob? [470]

(Testimony of Clarence Joseph Armant.)

A. Yes.

Q. Where did you have this talk with him?

A. In the superintendent's office.

Q. Was that Brady's office?

A. There were two superintendents, a day superintendent and a night superintendent. Hawkinson was day superintendent and Rollie Thompson was the other.

Q. All right. Where was this office you had this talk with Bob Cannon?

A. I would say it was about 75 feet from where I was working.

Q. On the top floor?

A. It was in Department 11.

Q. It was in Department 11? A. Yes.

Q. Who was there besides Bob Cannon and you?

A. There was me, there was Harmon Fellows, Rollie Thompson, Hawkinson, and Bob Cannon, and one or two other people; I don't remember who they were.

Q. Now, then, this was on the top floor in the superintendent's office, is that correct?

A. Yes.

Q. Now, at that time, right at that very time, there was quite a group, was there not, out in the cafeteria holding this meeting?

A. I would say there was about 50 people. [471]

Q. Was there a lot of talking and shouting and yelling going on? A. No.

Q. Was it a quiet sort of a meeting?

A. I didn't hear anything.

(Testimony of Clarence Joseph Armant.)

Q. You didn't hear anything? A. No.

Q. You wanted to go out and make a speech?

A. I didn't want to make a speech. I wanted to go out there and tell the workers they were trying to frame me, they were claiming they were out there on strike and they were telling them there was a production meeting.

Q. Did you know what was going on out in the cafeteria?

A. One of the grls from my department asked one of the girls—and I, of course, believe she was approached by one of the Board of Directors and told to come on out, they were having a production meeting.

Q. You say one of the girls in your department told you something about it. What was that?

A. She told me they were having a production meeting.

Q. All right. What else?

A. That is all.

Q. When did you ever learn there was anything but a production meeting going on out there?

A. When the superintendent came up to me and told me there [472] was a strike.

Q. That is the first you knew about it?

A. Yes.

Q. There was no noise out there at all; is that right? A. No.

Q. No singing or shouting or speechmaking that you heard? A. No, nothing.

Q. By the way, how far was this office you were

(Testimony of Clarence Joseph Armant.)

meeting in from the cafeteria where the 50 people were gathered?

A. About a hundred feet.

Q. About a hundred feet? A. Yes.

Q. It was quite removed, you couldn't hear anything at all; is that right?

A. I couldn't hear anything, no.

Q. Now, give me this conversation again where Drouet was present in the C.E.A. offices, when you were up there for a hearing. Do you remember that time? A. What do you want to know?

Q. I want you to tell me what Mr. Drouet said. First, I want to know who was there besides Drouet.

A. Who was there? Ned Mandella, Clark, Pete Vitale and Andy Brezenak. It seems like I am leaving one out. And this friend of mine I had taken over with me, Joe Ferns. Did I mention Floyd Cate? [473]

Q. You mentioned Floyd Cate, yes.

A. Did I?

Q. Yes.

A. Floyd Cate, Pete Vitale, Andy Brezenak, Ned Mandella, and myself, and this witness I brought over with me.

Q. What did Drouet say?

A. He asked me if I belonged to the Communist party.

Q. He told you you belonged to it; didn't he?

A. He asked me if I belonged.

Q. All right. Go ahead.

A. I told him no. One of the other fellows, I

(Testimony of Clarence Joseph Armant.)

believe it was Vitale said, "Yes, he belongs to the Communist party."

Ned Mandella said, "Let's search him now. I bet he has got a membership card on him now."

Q. What else?

A. Then I was accused of signing up workers in the plant and giving Inspector Brown these photostatic copies from the employment office and smoking in the rest room and making false statements against the Board of Directors. That is about it, I think.

Q. Now, this morning the hearing commissioner asked you what this foreman Drouet had said.

A. Yes.

Q. Will you repeat again what he said?

A. He asked me if I belonged to the Communist party. [474]

Q. What else did he say?

A. That is about all.

Q. Drouet is the foreman you refer to?

A. Yes, he was on the Board of Directors.

Q. He is not the man that made the charge you were a member of the Communist party?

A. He asked me if I was.

Q. I am asking you whether or not Mr. Drouet made the charges that you were a member of the Communist party?

A. Well, I never saw any charges. They just told me they had charges against me. I couldn't swear there were charges.

Q. Mr. Armant, I was under the impression

(Testimony of Clarence Joseph Armant.)

that when the hearing commissioner asked you what this foreman had said you said this morning he is the man that made the charges against you for being a member of the Communist party. Did you make such a statement?

A. I don't know. I don't believe I did.

Q. In any event, he didn't make such a charge; did he? A. I don't think he did, no.

Q. What else did Drouet, the foreman, say while he was there in that hearing?

A. You know how the fellows——

Q. No, I don't.

A. "Yes, he is guilty. Sure". I can't come out and say exactly what words he said because, you know, so much was [475] going on I couldn't remember every little word that was said. They all had a part in it, and they all had something to say.

Q. I am interested in Drouet. Did Drouet say "Yes, he is guilty?"

A. After the charges they all agreed that I was guilty, and I was going to be discharged.

Q. I say did Mr. Drouet say you were guilty?

A. Yes, he said I was guilty.

Q. Of being a member of the Communist party?

A. He didn't say a member of the Communist party. After all, the charges were read against me. They said, "Well, he is guilty." [476]

* * * *

(Testimony of Clarence Joseph Armant.)

Redirect Examination

Q. (By Mr. Ryan): Mr. Armant, in your cross-examination you made a statement to the effect, I believe, that you were elected shop steward for the C.I.O. shortly after you had begun work for the company in 1941; is that right? A. Yes.

Q. Where did that election take place?

A. Well, it was out near the plant there at a hall that the C.I.O. had rented.

Q. Out in that vicinity of Los Angeles?

A. Yes.

Q. Now, in the year 1942 and about the month of August before your first hearing that you have testified about—and I am referring now to that hearing that took place at the C.E.A. office——

A. Yes.

Q. ——where Mandella and Drouet and these other Board of Director people were present, before that or about that time did you make a speech over the radio, sponsored by the C.I.O.?

A. Yes, I did.

Q. Who asked you to make this speech on the radio?

A. Well, the organizer for the U.E. asked me if I would be willing to get on the radio and tell the workers just what was going on in the plant; so I did. [481]

Q. Now, when you refer to the U.E., do you have reference to the United Electrical, Radio and Machine Workers, C.I.O.? A. Yes.

Q. At that time was the U. E., using your term,

(Testimony of Clarence Joseph Armant.)

making an effort to campaign and get members in the plant? A. Yes, they were. [482]

* * * *

Mr. Ryan: Will you mark this document, Miss Reporter, as Board's Exhibit next in order?

(Thereupon, the document referred to was marked as Board's Exhibit No. 39, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 39, for identification, what purports to be "By-laws of Cannon Employees' Association." I show the document to counsel. I think they are the original by-laws of the organization, before they were amended. [486]

* * * *

Q. (By Mr. Ryan): Mr. Armant, after this hearing at the C.E.A. office, that is, the first time you had a hearing, and [495] that was with the Board of Directors of the C.E.A., that was about August 7, 1942? A. Yes.

Q. After you left that hearing, or while you were still in the hearing you were advised by the people gathered there, Mandella and the other directors, to the effect that they found you guilty of these charges? A. Yes.

Q. Then what did you do? Did they say anything to you about what was going to happen to you? A. They told me I would be discharged.

Q. Then you left the office and returned to work; did you? A. Yes.

No. 12142

United States
Court of Appeals

for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual, doing
business as CANNON ELECTRIC DEVELOP-
MENT COMPANY,
Respondents.

Transcript of Record

In Two Volumes

VOLUME II.

(Pages 337 to 717, inclusive)

Petition for Enforcement of Order of the
National Labor Relations Board

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PAUL P. O'BRIEN,
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No. 12142

United States
Court of Appeals

for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

VS.

CANNON MANUFACTURING CORPORATION
and JAMES H. CANNON, an individual, doing
business as CANNON ELECTRIC DEVELOP-
MENT COMPANY,
Respondents.

Transcript of Record

In Two Volumes

VOLUME II.

(Pages 337 to 717, inclusive)

Petition for Enforcement of Order of the
National Labor Relations Board

(Testimony of Clarence Joseph Armant.)

Q. I believe you stated you worked for them for some few days afterward.

A. A few days afterward.

Q. About how long?

A. About ten days or two weeks, something like that.

Q. Then how did it come about that you didn't work any more after that?

A. I came in one afternoon and my card wasn't in the rack, so I said, "Well, this is it."

Q. That is when you called Mandella; is that right?

A. Yes.

Q. Did you talk to anybody else that day at the plant, other [496] than Mandella? You talked to him on the telephone?

A. Yes.

Q. Did you talk to the guard or did you talk to anybody else?

A. I don't remember if I did or not. I don't think I did.

Q. You received notice thereafter from the C.I.O. that the conciliation man, Mr. Livingston had gotten you back to work or had left word for you to go back to work; is that right?

A. Yes.

Q. The first day you were back on the job, why, that was when the so-called strike took place; is that right?

A. Yes.

Q. Now, that evening after you had left the plant and after this so-called strike had taken place, and according to your testimony, Bob Cannon told you to leave the plant; is that right?

A. Yes.

(Testimony of Clarence Joseph Armant.)

Q. Then did you go to the C.I.O. offices after leaving the plant that night?

A. I got in touch with the C.I.O.

Mr. Cannon: I think the whole matter has been gone over.

Trial Examiner Batten: Yes, I think so.

Mr. Ryan: I am trying to lay a foundation for something else.

Would you mark this document, please, as Board's exhibit [497] next in order?

(Thereupon, the document referred to was marked as Board's Exhibit No. 40, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 40, for identification, a document entitled "Keep Production Going," purportedly signed by Clarence Armant and Harman Fellow. I show it to counsel.

Q. (By Mr. Ryan): Mr. Armant, I show you Board's Exhibit 40, for identification, and ask you to look at it and tell us, after you have looked at it, what it is, if you know?

A. This is exactly what happened in the plant the night that the workers walked in the cafeteria and this so-called strike happened. This was a leaflet put out by the United Electrical, Radio and Machine Workers, signed by Fellows and myself, after stating just what had happened in the plant. This leaflet was immediately put out.

(Testimony of Clarence Joseph Armant.)

Q. After you left the plant that night that Bob Cannon told you to get out of the plant——

Mr. Cannon: The testimony is not that Bob Cannon told him to get out of the plant, but told him to get out of the office.

Q. (By Mr. Ryan): What is the testimony?

A. The testimony is, "If you don't get out of the plant I will have you thrown out."

Mr. Cannon: That is what he told you? [498]

The Witness: Yes.

Q. (By Mr. Ryan): Now, after you left the plant on that occasion you went to the C.I.O. offices; did you?

A. Well, that leaflet was either put out that night or in the morning because the next thing I knew was I got in touch with the U.E.

Q. Did you corroborate with the C.I.O. officials in getting this bulletin out? A. I did.

Q. Was it distributed to the employees of the Cannon Company? A. Yes.

Mr. Ryan: I offer it in evidence as Board's Exhibit 40, for identification. I have a copy. [499]

* * * *

Recross-Examination

* * * *

Q. Did you ever join the C.E.A.?

A. Yes.

Q. When?

joined it.

Q. Did you join before or after the first election?

A. I don't remember that, either. I know I

(Testimony of Clarence Joseph Armant.)

A. Oh, I joined after the election.

Q. How soon after the election?

A. I don't remember how soon after, but I know it was after the election I joined. [502]

* * * *

Q. This day when the cafeteria group went into the cafeteria and moved through the shop, who was it that was going through the shop early that morning or that day?

A. That afternoon, I think it was. It was Andy Bereznak and Barnett. I don't know his first name.

Q. Bereznak and Shirl Barnett? A. Yes.

Q. They were going through the plant, and what were they doing?

A. I saw them stop and talk to the workers.

Q. What were they telling the workers; do you know?

A. The way I found it out was they were telling the workers they were going to have a production meeting in the cafeteria.

Q. Didn't they tell them it was a strike meeting?

A. I don't know whether they told them or not. All I am telling you is what I found out they said, that it was a production meeting. That is what I was told. What they said I don't know. [505]

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Redirect Examination

Q. (By Mr. Ryan): Mr. Armant, at the time that you made that radio speech, you made it for

(Testimony of Clarence Joseph Armant.)

the C.I.O., I believe, and you stated an organizer asked you to make it? A. Yes.

Q. At that time the C.I.O. was in the process of carrying on a campaign to organize the employees there? A. Yes, they were.

Q. Were you active with the C.I.O. at that time?

A. I was a C.I.O. shop steward at that time.

Q. You were? A. Yes. [511]

Q. You were that right up to the time you left the employ of the company for the last time; is that right?

A. Now, as I recollect, I think this radio speech was made right before the arbitration or either right after. It was somewhere around in that time, somewhere around September 15th.

Q. Were you shop steward for the C.I.O.?

A. No, not at that time. I don't remember exactly when it was made. It keeps coming back in my mind.

Q. I am not asking you about that now. I am asking if you were a C.I.O. shop steward at the time you were having these arbitrations with Cannon?

A. At the arbitration hearing was I a shop steward?

Q. Yes. As of that time were you a C.I.O. shop steward? A. During the arbitration?

Q. During that time.

A. Well, I don't think I was.

Q. When did you stop being a shop steward for the C.I.O.?

(Testimony of Clarence Joseph Armant.)

A. Right after the election.

Q. Which election? A. The first election.

Q. Then did you later on ever become a shop steward again while you were employed by the company? A. No.

Q. But did you continue to be a member of the C.I.O.? [512]

A. Well, I had signed a card. I wasn't paying any dues or anything. I had just signed a card and I had never turned in—told the C.I.O. I was not belonging to the union, or anything. I guess they still had the card I signed. Nobody was paying dues, we just signed cards and that is all.

Q. The C.I.O. was holding membership meetings on occasion; weren't they?

A. Occasionally, yes, they were.

Q. Did you attend them?

A. I went to some of the meetings, yes.

Q. As soon as you got into these matters relative to your termination out there on these arbitration hearings, you went to the C.I.O. right away?

A. Yes.

Q. You didn't sever your connection with the C.I.O.? A. No.

Q. After you left the employ of the company for the last time, did you thereafter go right to work some place else?

A. I went to work for the Douglas Aircraft, Santa Monica. [513]

ELSIE MONJAR,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): Will you state your full name, please, Miss Monjar?

A. My name is Elsie Monjar.

Q. What is your address, Miss Monjar?

A. 5943 South Olive Street, in Los Angeles.

Q. Were you ever employed by Cannon Manufacturing Corporation? A. Yes, I was.

Q. When were you first employed by that organization?

A. As I remember, it was April 16, 1941, that I was first employed there.

Q. In what department were you first employed?

A. In Department 11.

Q. Did that department have any other designation? [514]

A. Yes, it was called finish castings.

Q. Who was your supervisor?

A. Glen McClung was the foreman of the department.

Q. How long did you continue in that department?

A. I worked in that department 10 months, as I remember. I believe it was in either January or February of the following year I transferred into the assembly department.

Q. How long did you stay in the assembly department after your transfer?

(Testimony of Elsie Monjar.)

A. I worked in the assembly department from that time until I left the employ of the company, which was the following October.

Q. Of 1942? A. Yes.

Q. While you were in the assembly department, who was your foreman? A. Nick Gervasi.

* * * *

Q. (By Mr. Ryan): Now, on or about May 20, 1941, did you have a conversation with Ned Mandella at the shop? A. Yes, I did.

Mr. Cannon: You said May 20th?

Mr. Ryan: On or about that date.

Q. (By Mr. Ryan): Miss Monjar, will you tell us where the [515] conversation took place and who was present?

A. Yes. It took place in the assembly department, inside of the plant. There was no one present, as I remember, except Ned Mandella to whom I was speaking, and myself.

Q. About what time of day was this?

A. It was just before I went on shift. The shift changed at 3:30, as I remember, which would make it about 3:10 in the afternoon I talked to Ned.

Q. Your shift was the one that started in the afternoon, the swing shift; is that right?

A. Yes, I was on the swing shift.

Q. This was a little while before you were due to go to work; is that right? A. Yes.

Q. But Mandella at that time was working on the day shift; was he? A. Yes.

(Testimony of Elsie Monjar.)

Q. And you had gone into the assembly department to talk to him? A. That is right.

Q. You worked in the assembly department, did you; is that right?

A. No, at that time I was working in Department 11 on the swing shift, while he was working in the assembly department which, I believe was Department No. 3, on the day shift. [516]

Q. Will you relate the conversation that took place at that time between you and Mandella?

A. Yes. To the best of my memory, I asked him first to tell me what was the Cannon Employees' Association, the Cannon Employees Recreational Association, the Cannon Employees Welfare Association.

His first sentence was very oddly worded. He said, "They are all mine. The Cannon Employees Association and the Cannon Employees Recreational Association are the same thing." Then he said, "The Cannon Employees Welfare Association is mine, too, but the boss asked me to leave that and organize——"

Mr. Cannon: I couldn't hear.

(The answer was read.)

The Witness: "——Cannon Employees' Association instead."

Q. (By Mr. Ryan): Now, go on with the conversation, if there was more.

A. Yes, there was quite a bit more. I asked him then about the Welfare Association, and he told me a little bit about how it had been set up. He also

(Testimony of Elsie Monjar.)

said his baby was the first one to receive the \$50.00 baby bonus. The major part of that conversation was around the question of bonuses, which Mr. Cannon made a practice of giving to employees who had new babies. He was pointing out the fact his child was born at the time of the inception of that policy and had gotten [517] the first \$50.00 baby bonus.

I asked him again about the Recreational Association and the C.E.A., and whether or not the C.E.A. was a union. He said it wasn't a company union. It was an employees' union.

I asked him what its purpose was, why it was organized or what it was set up for. He said it was to keep out the C.I.O., so the boss would never deal with the C.I.O. organization and that he wouldn't talk to the C.I.O. I felt that if he wouldn't talk to the C.I.O.—

Mr. Cannon: Just a minute. I move to strike out her declaration as to her feelings.

Trial Examiner Batten: Are you telling us what he said?

The Witness: As I remember Ned was explaining there was not a company union, it was an employees' union and that the boss would not deal with the C.I.O. The question came in my mind then as to whether he would deal with any other labor organization.

Trial Examiner Batten: We are not interested in what came in your mind or what you felt. You tell us what you said and what he said.

(Testimony of Elsie Monjar.)

The Witness: All right. He said that the Association wasn't really a union, that its purpose was to keep out the C.I.O. We discussed that generally. He elaborated on that a little bit. And then I asked him how many people were in [518] the Association. He said there were approximately 700.

I asked him then about whether the Association was well organized on the swing shift, which of course was what I was primarily interested in. He said, no, the swing shift—which I called a trick—was not particularly interested in the Association and that while he had several girls in Department 11 trying to organize the Association they had never been particularly successful.

Then he said, "Here, I will let you do something for me. You take these papers and sign up people in the Association."

I told him I didn't feel I could do that because I had never been elected an officer of the Association, a Captain, as he called it. I wasn't even a member of the Association.

He said that that would be all right, that I should go ahead and talk to the people next to me at work and tell the girls if the C.I.O. came in they would all lose their jobs, because the boss would never deal with the C.I.O. And if anybody tried to stop me from talking to the girls on the job about joining the Association to tell them that Ned Mandella had told me to do it and it would be all right.

Then I asked him about the next meeting which, as I remember, he said would be the following

(Testimony of Elsie Monjar.)

Monday. I said I would bring some of the girls down to that meeting if I could. [519] As I remember that was the substance of the conversation.

Q. Did I understand you to say that he suggested that you could help him on your shift?

A. Yes, he told me to take the papers. He had a sheaf of blank papers there and to sign up the girls in the Association. He also told me I wouldn't be working for nothing, because they would take me out to a free dinner once every two weeks to repay me for my efforts in attempting to sign the girls up in the C.E.A.

Q. What sort of papers were these he had, Miss Monjar?

A. As I remember they were blank sheets of paper on one side. On the reverse side they were the forms that were filled out by the workers in the assembly department describing the type of work they had done that day; they were production records of individual employees.

Q. They weren't membership cards, then; is that right?

A. No, the membership cards were made out by Helen Olsen who was secretary of the Association. When I turned back the list of names and the 50 cents initiation fee that was collected at the time the individuals signed the sheet of paper stating they wished to join the Association——

Q. After your conversation with Mandella, did you engage in any solicitation for this Association?

A. Yes, I did.

(Testimony of Elsie Monjar.)

Q. You did? [520] A. Yes.

Q. How soon after you talked to Mandella did you become active in the Association as a solicitor for membership, about how long?

A. I would say it was probably within the next day or two because as clearly as I remember it I took the sheets at that time and talked to the girls with whom I was most friendly and signed some of those up. And then I started talking to other people in my department and on my shift about joining the Association.

Q. Did you do that during working hours, during your working hours?

A. I don't remember that I did. I can remember doing it before working hours and at lunch time, but the only thing I did on company time in relation to the Association, that I can remember clearly, was taking the money and the signed sheets back into the assembly department and giving them to Helen Olsen in exchange for membership cards for the list I had turned in previously. I took the cards from her and returned them to the people that had signed applications.

Q. After you would get these people to sign these sheets, then you would take them and would you also collect the money from these girls at such time? A. Yes.

Q. What were the dues then? [521]

A. The initiation fee was 50 cents. I don't remember ever having had collected any dues.

Q. Then after you would get these papers signed

(Testimony of Elsie Monjar.)

and the 50 cents from the people that signed them, you would take them into Helen Olsen. Who was she?

A. Helen Olsen was secretary of the Association.

Q. Did you ever on occasions take them into her during working hours?

A. It was during her working hours. It wasn't during my working hours.

Q. On the occasion when you would take them in to her she would give you some membership cards, is that right, for the Association in exchange?

A. They were small orange membership cards which said "Cannon Employees Recreational Association" on them. It was usually a couple of days after I turned in the sheet of names that I would get the group of applications or the little orange membership cards for the people on the list I had turned in previously.

Q. Miss Monjar, I show you Board's Exhibit 34 and ask you whether or not the cards you received from Miss Olsen were identical with the card that is Board's Exhibit 34.

A. Yes, that is correct, except at all times I don't remember Bereznak's name being signed on there. Of course, the identification of the dues payments on each card would vary [522] with the individual, what month he paid his dues. The card itself, the form was the one we used.

Q. Now, how long did you continue to be active in signing up these people for the Association, approximately?

(Testimony of Elsie Monjar.)

A. I would say it was probably a period of about two and a half months.

Q. During that time, Miss Monjar, how many times would you estimate that you took the signed papers and some money into Miss Olsen while she was at work in her department? How many times would you say you went in to see her during that two and a half months?

A. That would be difficult to say. I can remember distinctly three different occasions that I did that. There were probably others, but I don't remember it. I happen to remember those three because I can remember part of the conversations that went on during those three times.

Q. Can you tell us the approximate times on those three occasions?

A. Yes, one must have been within a week after the first time that I talked to Ned Mandella and took the sheets of paper. The next time was probably a few days after that. And the next, as I remember, was a couple of weeks later. I am not too sure of those dates, I wouldn't swear by them.

Q. On the first occasion you brought this material into her and the money, was anyone present when you talked to her? [523]

A. No, I don't remember that anyone was.

Q. Will you tell us what the conversation was then?

Mr. Cannon: May I have an objection to all this as being hearsay?

Trial Examiner Batten: Yes.

(Testimony of Elsie Monjar.)

Mr. Cannon: Go ahead.

The Witness: The conversation at that time was merely that I said, "Helen, here are some sheets of names and the money I collected for membership."

She took them and said, "All right. I will make out the cards if you will pick them up next time you come in."

That was the substance of the first conversation.

The second time I came in, I had, I believe, a few more names and she complimented me very highly on the fact I was signing up a considerable number of people in the Association. She said I was doing very good work at that time.

The third time I don't remember anything specifically, except she took them and gave me a list of cards, I mean a stack of cards for the people I had signed up previously.

Q. On these occasions you would go into her department while she would be working. By the way, who was her foreman at that time?

A. Nick Gervasi.

Q. Gervasi? A. G-e-r-v-a-s-i. [524]

Q. When you walked into her department do you recall that Nick Gervasi was ever there to observe you going in there?

A. Yes, Nick was there several times.

Q. Did he say anything to you?

A. No, he never interfered in anyway with my speaking to either Helen or Ned.

Q. Ned Mandella? A. Ned Mandella, yes.

(Testimony of Elsie Monjar.)

Q. Did he work in that department, also?

A. Yes.

Q. Do you know that he knew that you were going in there?

Mr. Cannon: Just a minute. If he saw her he must have known.

Trial Examiner Batten: Well, did you testify he saw you going in?

The Witness: He looked at me and smiled, so I assume he saw me.

Q. (By Mr. Ryan): Now, you continued to be active about two and a half months, I believe. Did you thereafter leave the Association?

A. Yes, I joined the C.I.O.

Q. You joined the C.I.O. then? A. Yes.

Q. So approximately from two and a half to three months after you began working for the company you joined the C.I.O. [525] is that right?

A. Yes, that is correct.

Q. That would be about right? A. Yes.

Q. And you resigned from the Association?

A. Yes. There was no formal resignation. I merely joined the C.I.O. and stopped being a member of the Association without formally resigning from it.

Q. Now, after you joined the C.I.O. did you become active in that organization?

A. Yes, I did.

Q. Did you take part in the campaign of the C.I.O. for members among the Cannon employees

(Testimony of Elsie Monjar.)

prior to the first National Labor Relations Board election? A. Yes, I did.

Q. Do you recall that that first election was held on or about September 9, 1941?

A. Yes, that is correct.

Q. Now, about some few days or weeks possibly before that first election, did you observe that some loud speakers were installed in the plant there?

A. Yes, but I believe it was longer than a few days. I think it was about two weeks before the election itself.

Q. Did you see them being installed?

A. I heard them after they were installed. I didn't see the [526] actual installation.

Q. As part of the C.I.O. campaign for members among the employees, did they bring their sound truck down to the Cannon plant on occasions?

A. Yes, very frequently.

Q. Was it always at a regular time that the truck would appear there?

A. Yes, it generally appeared half an hour before shifts.

Q. Before the change of shifts? A. Yes.

Q. That would be in the afternoon?

A. For my shift, yes.

Q. By the way, can you tell us whether any of these loud speakers were installed outside the building?

A. Some of them were installed on the roof. I don't know whether there were any at any other locations around the outside of the building or not.

(Testimony of Elsie Monjar.)

Q. Did you ever have occasion to observe that the C.I.O. sound truck had come down there to broadcast about the change of shifts and also observe that at that particular moment the volume of music that would be played over these loud speakers would be greatly magnified?

Mr. Cannon: I object to that as being immaterial.

Trial Examiner Batten: You may tell us.

The Witness: Yes, I did. [527]

Q. (By Mr. Ryan): Can you tell us whether or not while the C.I.O. sound truck was there that the volume would be greatly increased over these loud speakers, the volume of music that would be played in the plant?

A. Yes, it would be magnified so greatly it was almost impossible to carry on a conversation with someone standing right next to you.

Q. Within the plant while you were working?

A. Within the plant, yes.

Q. Was it possible to hear anything other than the music?

Mr. Cannon: May I have my objection to all this?

Trial Examiner Batten: Yes, you may have a standing objection.

Q. (By Mr. Ryan): Now, at any other time of the day and at any other time than when the C.I.O. sound trucks were at the plant were you affected by this loud noise? Did you hear any loud broad-

(Testimony of Elsie Monjar.)

casting over these loud speakers, other than when the C.I.O. sound truck was there?

A. No, the music played at a reasonable pitch except when the C.I.O. sound truck was standing outside the gate, then it was magnified greatly.

Q. When the C.I.O. sound truck would leave the plant, did you notice the volume would drop down?

Trial Examiner Batten: Did you notice when the sound truck was out there and you were inside the shop you could [528] hear it if there was no interference?

The Witness: Yes.

Trial Examiner Batten: They had it going as loud as it could go?

The Witness: Yes.

Trial Examiner Batten: If you were in the plant you could hear it if there were no competing noises?

The Witness: Yes.

Q. (By Mr. Ryan): Could you hear it if the volume was not increased?

A. It would be difficult to distinguish talking from the C.I.O. sound truck over the plant noises. It was perfectly clear outside the plant where the employees would congregate before going on shift.

Q. After the loud speakers were installed and the volume was greatly increased, at such time as the C.I.O. sound truck would appear, could you hear the sound truck and understand even when you were out in front?

(Testimony of Elsie Monjar.)

A. No, because the loud speakers on top of the roof made it extremely difficult to distinguish the noise coming from the sound truck and the noise coming from the top of the roof.

Q. Did you notice shortly after the first Labor Board election whether those loud speakers were allowed to remain on the roof of the building after the first Labor Board election? [529]

A. I don't know whether they were removed or not. The tuning up of the loud speakers was not used after the election.

Q. Now, about a few days before the first Labor Board election did you have any occasion to observe the foreman, Mr. McClung, of Department 11, in his department?

A. Yes, I saw him every day.

Q. A few days before the first Labor Board election did you have any occasion to observe him in connection with C.E.A. buttons?

A. Yes. The day before the election, as I remember, Glen McClung was wearing a C.E.A. pin.

Q. In the shop?

A. In the shop, on shift, yes.

Q. And also a day or so before the Labor Board election did you have occasion to observe any C.E.A. literature in the plant?

A. There was some that was left on top of the time clock at the entrance to the plant. Employees coming on shift were taking the literature as they punched their time cards.

Q. Right up there at the time clock did the

(Testimony of Elsie Monjar.)

company have any official regularly stationed?

A. Yes, they had a guard stationed near the time clock.

Q. Right at the time clock?

A. No, right in front of the time clock. He was stationed close to it. [530]

Q. Was there a guard's desk located there near the time clock?

A. Yes, there was a guard's desk there, but not right at the time clock. There was a guard usually stationed in the long areaway where the time cards were stationed.

Q. Where was the literature that you saw?

A. I don't remember whether it was right on the time clock or right on top of the time clock. It was in close conjunction with the time clock, however.

Q. On the day of the election the results of the National Labor Relations Board election were announced, is that right, in the evening?

A. Yes, the announcement was made over the loud speaking system at the plant at about 6:00 o'clock the evening of the election.

Q. By whom was it made, if you know?

A. I don't know.

Q. Then immediately thereafter did you have occasion to hear Foreman McClung make a statement?

A. Yes, Mr. McClung was standing about 3 feet from me talking with somebody else whom I don't

(Testimony of Elsie Monjar.)

remember. And he made the statement very jubilantly, "Well, we won the election."

Just following that time he came around to at least me, and I assume the others wearing C.I.O. steward pins or C.I.O. [531] membership pins—

Mr. Cannon: I move to strike that out about her assumption.

Trial Examiner Batten: It may be stricken.

The Witness: I will say Mr. McClung came to me and ordered me to remove my C.I.O. pin.

Q. (By Mr. Ryan): You were a C.I.O. shop steward for the C.I.O.?

A. Yes, I was a C.I.O. shop steward for the C.I.O.

Q. Did you have it on at the particular time that you have just mentioned?

A. Yes, I wore it on all occasions at the plant.

Q. Were you at your job at the time? Were you in the plant at your job working at that time?

A. I was working at my machine at the time when McClung came to me.

Q. Was he your foreman then?

A. Yes, he was. [532]

* * * *

Q. (By Mr. Ryan): Miss Monjar, did you have a conversation with Mr. Al George? First of all, do you know Al George? A. Yes.

Q. Do you remember an occasion when he came to you and had a conversation with you relative to some matters he had previously been discussing with Johnny Gibson?

(Testimony of Elsie Monjar.)

A. Yes, I do remember that.

Q. When was that particular time, as best you can recall?

A. As best I can recall it was the end of February or the beginning of March, 1942.

Mr. Cannon: 1942?

The Witness: Yes.

Q. (By Mr. Ryan): Where did the conversation take place?

A. The conversation took place at the entrance in the plant just as we were going back after lunch. At that time [538] I had already transfered on to the day shift and was working in the assembly department.

Q. What time did you say it was?

A. It was right after lunch, just as we were going back on shift.

Q. Where were you at the particular time you had the conversation?

A. We were inside the plant, in the hallway that led to the plant proper.

Q. Was anyone else present when you and Mr. George were talking?

A. No, I don't believe there was anyone else present at that particular time. [539]

* * * *

Q. (By Mr. Ryan): Miss Monjar, would you relate the conversation with Mr. George on that occasion?

A. Yes, Mr. George told me that I was being

(Testimony of Elsie Monjar.)

framed by the Association and I would be fired, and to watch my step very carefully.

Q. Did he tell you where he had gotten that information?

A. I don't remember that he did tell me at that time where he got the information.

Q. Then within an hour or so thereafter, did you have occasion to be called into the superintendent's, Superintendent Cromwell's office? [542]

A. Yes, I was called by Pete Vitale away from my job over to a corner where Andy Bereznak and he were waiting. They both accused me of spreading malicious rumors about the Association.

Andy said, "Come on. We will settle this right now." They took me to Mr. Cromwell's office at that time. [543]

* * * *

Q. (By Mr. Ryan): Miss Monjar, about how long was it after Al George came to you that this Pete Vitale came to you?

A. About twenty minutes.

Q. He was a director of the C.E.A. at that time?

A. Yes, he was.

Q. Were you at work when Vitale came to you?

A. Yes.

Q. What did he say to you?

A. He said, "Come on over here. We want to talk to you for a minute."

Q. Was anyone present when he said that to you, other than yourself?

(Testimony of Elsie Monjar.)

A. He was speaking directly to me at my work bench.

Q. Where did he work at that particular time; do you know?

A. He was a leadman in the department. He moved around the floor.

Q. He was a leadman in your department?

A. Yes.

Q. Was he your leadman? A. Yes.

Q. Where did he take you to? Did you go with him to some spot?

A. Yes, I went with him about 10 feet over to the side of the room where Andy Bereznak was waiting.

Q. What was Bereznak's business in there at that particular [546] time? Was he an employee on that shift?

A. He was an employee on that shift, but not in that department.

Q. Where was the department he would normally be working at, if he was working at his job?

A. He was in the paint room, which was adjacent to the assembly department.

Q. Bereznak was an officer, was he not, of the C.E.A. at that time?

A. Yes, he was a member of the board of directors.

Q. When you and Vitale and Bereznak got together there, was anyone else present?

A. Not at that time, no.

Q. Did you have a conversation?

(Testimony of Elsie Monjar.)

A. A very brief conversation.

Q. Will you tell us what was said and by whom?

A. Mr. Bereznak asked me if I had made the statement that the Association was trying to frame me. I told him yes, I had, I had made it to Cecelia Martin.

At that point he said, "Come on, we will go settle this thing now. We will go in and see Mr. Cromwell."

Q. Did you and Bereznak leave the department then and go right into Cromwell's office?

A. Mr. Vitale went with us. The three of us went to Mr. Cromwell's office. [547]

Q. When you got into Superintendent Cromwell's office, whom did you find there, if anyone?

A. Mr. Cromwell was there and his secretary Howard Jorgensen.

Q. Now, what was said after you got in there?

A. We came in to Mr. Cromwell. He asked us to be seated. Then Andy Bereznak made the statement I had been circulating rumors to the effect the Association was trying to frame me.

Mr. Cromwell asked me if that were true.

I said I didn't consider it a rumor, it was a reported statement that had been made to me.

He asked me who had made the statement, and I told him Al George. He said, "We will get Al in here and settle this thing."

At that point he sent Howard Jorgensen for Al George, who came back within a space of a couple of minutes.

(Testimony of Elsie Monjar.)

Q. After George arrived in the office, will you tell us what was said and what was done and by whom?

A. Yes. At that time there was Vitale, Bereznak, Mr. Cromwell, Howard Jorgensen and Al George and myself in the office. Mr. Cromwell asked Al whether he had been circulating such a rumor. Al said he had just told me for my own protection that this thing was being planned, and to watch out for it.

Mr. Cromwell asked him for further details, which Al [548] refused to give until he was given a fair and open hearing. Mr. Cromwell became very angry and said, "We will have a hearing then tomorrow afternoon." And we broke up the meeting in his office at that time.

Q. The next afternoon did you attend a hearing?

A. I was there for a portion of the hearing, yes.

Q. Where did the hearing take place?

A. It took place on the second floor of the plant in the conference room.

Q. What notice did you receive the next day to attend the conference, or did you receive any special notice to come up to it?

A. Yes. My foreman told me to go upstairs to the conference room.

Q. Who was the foreman then?

A. Nick Gervasi.

Q. What did he say to you in that connection?

A. I don't remember his exact words. The substance of it was, "You are wanted up in the conference room."

(Testimony of Elsie Monjar.)

Q. About what time of day was that?

A. As I remember, it was in the afternoon, possibly 2:00 o'clock.

Q. You went to the conference room then; did you?

A. Yes, I did.

Q. When you got there was anyone else present?

A. Yes, the room was fairly well filled around the big table, the Board of Directors of the Association were present. Mr. Cromwell was there and the attorney for the Association.

Q. Pardon?

A. Joseph Lewis, the attorney for the Association, was present.

Q. Will you name as many of the Board of Directors whose names you know, as you can?

A. Yes. Floyd Izsom was there; Fred Clark was there—

Q. Clark?

A. Clark—Andy Bereznak was there; Pete Vitale. I don't remember whether George Fish was there or not. Those are the only ones I can place in relation around the table.

Q. Was Mandella there?

A. I don't remember him specifically. He probably was.

Mr. Cannon: I move to strike it out, "probably was", as being argumentative.

Trial Examiner Batten: It may be stricken. Of course, it is obvious it doesn't mean anything.

Q. (By Mr. Ryan): The attorney for the C.E.A. was named Joe Lewis; isn't that right?

A. Yes, that is right.

(Testimony of Elsie Monjar.)

Q. Superintendent Cromwell was there, too?

A. Yes.

Q. Was his man Jorgensen, his office boy, there?

A. I don't remember if he was there.

Q. Well, was Al George there?

A. Al George came in shortly after I was called in.

Q. Will you tell us what the first thing was you heard said when you got there, and by whom?

A. Mr. Lewis asked me to relate the conversation that we had had in Cromwell's office the day before.

I asked him to clarify exactly what my position was there in relation to the whole hearing.

He said it was merely a hearing to ascertain the facts of whether anyone in the shop was spreading false rumors about anybody else, and would I relate briefly the subject of the entire conversation I had had with Al George.

Q. Did you? A. I did so, yes.

Q. What did you say?

A. I told him that I had had a conversation with Al George in which Al told me that the Association was attempting to frame me, and to watch my step.

Q. Then what was the next thing that took place in the conference, if anything?

A. The next thing that took place was the questioning of Al George. But I was not there for that whole situation. As I recall, he asked for a chance to obtain an attorney and was informed he was supposed to have made that arrangement [551] prior to the hearing.

(Testimony of Elsie Monjar.)

Q. Was George sent for during the time you were there? A. Yes.

Q. He did come while you were there?

A. Yes.

Q. Who sent for him?

A. He was there before the hearing opened.

Q. Who sent for him?

A. I don't remember who sent for him.

Q. Now, this Floyd Izsom who was present as a Board of Director member, do you know what shift he worked on?

A. I know that for a while he was employed on the swing shift. I don't know whether he was transferred onto the day shift or not.

Q. At that time you don't know what shift he worked on? A. No, I don't remember.

Q. This Mr. Clark, who is a Board of Directors member, do you know what shift he worked on at that time? A. I am not sure.

Q. Well, you left, as I understand, before it was over; is that right?

A. Yes, that is right. I went back to work.

Q. Someone excused you and told you to leave, or did you just suggest you leave?

A. No. Mr. Lewis told me that was all they would need me [552] for.

Q. Did you return to your job on your shift?

A. Yes. As I remember I went back to work on the shift.

Q. After that did you have any further conversation with anybody representing the C.E.A. or the

(Testimony of Elsie Monjar.)

company, relative to this matter of false rumors?

A. No, I don't remember of having done so.

Q. Thereafter was there any change in your job?

A. Yes, I was shifted from the main section of the assembly department to a more isolated section where the stamping was done.

Q. Who did the shifting of your job?

A. My foreman, Nick Gervasi.

Q. About how long was it after this Al George matter that you have testified to that you were shifted?

A. I don't remember the exact date. It was a very short period after that, possibly a week or two.

Q. (By Trial Examiner Batten): What do you mean?

A. I mean that the main section of the assembly department was made up of a series of tables grouped together in orderly rows. The table I was shifted to was one approximately seven or eight feet away from the main section of the assembly department and isolated behind a series of boxes.

Q. All in one room?

A. That section of the building is under one roof. There [553] was a division, which was not a partition to the room, separating this section.

Q. You mean it was partitioned, there was a wall separating it?

A. It is not a wall. It is merely that some material was stacked there that separated that section.

Q. Were other employees working back there doing the same work? A. No.

(Testimony of Elsie Monjar.)

Q. You mean you were working there all alone?

A. That is right.

Q. How far were you from the nearest employee?

A. From the nearest employee working at a bench I was probably about seven or eight feet. There was, however, a spray cabinet there to which employees came over frequently to spray the castings after they were ready to be assembled.

Q. The employees came over there frequently near you, so you weren't isolated?

A. I was isolated in the sense I was working constantly at this table and a number of employees came over and used the spray table for a minute or a half minute, and would go away.

* * * *

[554]

Q. (By Mr. Ryan): Miss Monjar, about April, 1942, did you have occasion to have a conversation with your foreman, with Foreman Gervasi, about a leave of absence?

A. Yes, I requested a four weeks' leave of absence for the month of May.

Q. About when did you have the discussion with Mr. Gervasi about that leave?

A. It was late in April.

Q. 1942? A. 1942.

Q. Where did the conversation take place?

A. I told Mr. Gervasi that it was necessary—

Q. Where did it take place?

A. Where did it take place?

Q. Yes.

(Testimony of Elsie Monjar.)

A. It took place in the assembly department at the plant.

Q. What particular place in the assembly department? [557]

A. It took place at Mr. Gervasi's desk on the floor.

Q. Was anyone present other than you and Gervasi? A. No, no one else was there.

Q. Will you relate the conversation, please?

A. Yes. I asked Mr. Gervasi for a four weeks' leave of absence because it was necessary to take my mother back to Cincinnati, she was very ill. Mr. Gervasi told me that it was unfortunate that I had the connections I did and had made the record at Cannon I had in relation to union activities, because it was very hard for the company to grant me any favors when I had the attitude I did have.

He kept me at his desk about an hour pointing out the error of my ways to me in relation to the Association and the fact I shouldn't have come out for the C.I.O. like I did.

Q. Was your leave finally granted?

A. Yes, after about an hour's conversation, during which I was extremely upset because it was necessary for me to make that trip and it appeared it was going to be impossible.

Mr. Cannon: I move to strike that out.

Trial Examiner Batten: It may be all stricken.

Q. (By Mr. Ryan): Were you away from the place about four weeks at the plant while you took your mother back east?

(Testimony of Elsie Monjar.)

A. Yes, I was away for exactly four weeks.

Q. You returned to work for the company; did you?
A. Yes, I did. [558]

Q. The C.I.O. in the summer or fall of 1942, do you recall they petitioned the Labor Board to hold a second election out there?

A. Yes, they did.

Q. There was a campaign launched then by the C.I.O. in the summer of 1942, or the spring of 1942, that carried on through the summer and fall, is that right, for members?

A. Yes, that is correct.

Q. Were you active in that C.I.O. campaign?

A. Yes, I was very active in it.

Q. In the fall, about October, did you resign your job with the company?

A. Yes, I resigned my job about October 20th.

Q. 1942? A. 1942.

Q. And then you became an organizer for the C.I.O. full time for a while?

A. Yes. I was an International Field Organizer with the Electrical Workers.

Q. Part of your organizing activities involved the campaign to get Cannon employees into the C.I.O.; is that right? A. Yes, that is right.

Q. For this coming second Labor Board election; is that right? A. That is right. [559]

* * * *

(Testimony of Elsie Monjar.)

Redirect Examination

Q. (By Mr. Ryan): Miss Monjar, while you were employed by the company was a sort of a newspaper published by the company?

A. Yes, the Cannoneer was a monthly publication of the company.

Q. Was it published monthly, you say?

A. To the best of my memory it was a monthly publication.

Q. Who was in charge of the publication of that while you were there? A. Bruce Lindeke.

Q. Who was he? [601]

A. He was the editor. He was an employee of the company. Mr. Frank Hobart, whose official title I don't know—I believe he was in the public relations department. However, he was also working on the staff.

Mr. Ryan: Do you know what his title was, Mr. Cannon, Frank Hobart?

Mr. Wilcox: He is employee relations director. He is editor-in-chief of the Cannoneer and employee relations director.

Mr. Ryan: How long has he held those positions?

Mr. Wilcox: Approximately five years, I would say.

Mr. Cannon: He has been with Jim Cannon about 20 years.

Mr. Ryan: I just wondered about his present position.

Q. (By Mr. Ryan): Now, Miss Monjar, while

(Testimony of Elsie Monjar.)

you were an employee of the company, were you at any time on the editorial staff of the Cannoneer?

A. Yes, I was.

Q. Will you tell us about when that was you were on the staff?

A. To the best of my memory it was a period of two or three months. Roughly, from September to December of 1941.

Q. And at that particular time were you on the editorial staff of any other newspaper?

A. Yes, I was writing for the U.E.-Cannon News.

Q. The U.E.-Cannon News was the United Electrical, Radio and Machine Workers, C.I.O. News?

A. Yes.

Q. Did that organization put out a newspaper which they circulated to employees of Cannon Electric Development Company?

A. It wasn't a form of a newspaper. It was a form of mimeograph bulletin. It served the purpose of a newspaper.

Q. You wrote articles for that paper?

A. Yes.

Q. Your duties in connection with the Cannoneer were to write articles, also?

A. Yes.

Mr. Ryan: Miss Reporter, will you please mark these documents as Board's Exhibits next in order?

(The documents referred to were marked as Board's Exhibits Nos. 41-A, 41-B and 41-C, for identification.)

Mr. Ryan: I have had marked as Board's Exhibits 41-A, 41-B and 41-C for identification what

(Testimony of Elsie Monjar.)

purport to be copies of the Cannoneer publication of the Cannon Electric Development Company.

Mr. Cannon: Give me the dates of them.

Mr. Ryan: The date of the issue which is Board's Exhibit 41-A for identification is for the month of September, 1941. It is Volume I, No. 5 issue.

Board's Exhibit 41-B for identification is dated for the month of November, 1941, Volume I, No. 7 issue.

Board's Exhibit 41-C for identification is dated March, [603] 1942. Do you wish to see them, counsel?

Mr. Cannon: No.

Q. (By Mr. Ryan): Miss Monjar, I show you Board's Exhibit 41-A for identification and ask you whether or not you were on the editorial staff of the Cannoneer as of the time that publication was issued.

A. Yes, I was.

Q. Is there anything on the document itself which lists you as a member of the staff?

A. Yes, the list of staff associates here (indicating).

Q. They are listed on page 2 in the first column at the bottom of the page; is that right?

A. Yes.

Q. The editorial staff? A. Yes.

Q. Now, Miss Monjar, in connection with Board's Exhibit 41-A for identification, directing your attention to page 2, the first column on the left-hand side of the page at the bottom, the heading the "Cannoneer" and then underneath that "Published monthly in the interest of the employees of Cannon

(Testimony of Elsie Monjar.)

Electric Development Company." Do you know whether or not any of those members listed there were officers or representatives of the Cannon Employees' Association?

A. Yes, James Barton was a member of the board of directors. Floyd Cate was a member of the board of directors. I don't [604] remember whether at that time he was or not. He was subsequently. Joseph Canale was shop steward in the Association. To the best of my memory Bob Miller was a shop steward in the Association. That is all on that one that I remember.

Q. Looking at Board's Exhibit 41-B for identification, the editorial staff members are listed on page 2 in the first column at the bottom of the page in the same respective location, is that right, of the magazine?

A. Yes.

Q. Also on Board's Exhibit 41-C for identification. Now, Miss Monjar, did you have a conversation with Mr. Hobart about your membership on that editorial staff at any time after you had become a member of the editorial staff of the Cannoneer?

A. Yes, I did.

Q. About when did that take place?

A. To the best of my memory it was in November, 1941.

Q. Where did it take place?

A. It took place at Mr. Hobart's desk on the second floor of the company's premises there.

Q. Were you called in there by him?

A. Yes, he called me up to his office.

(Testimony of Elsie Monjar.)

Q. He called you away from your work on the occasion? A. Yes. [605]

Q. Will you tell us whether anyone else was present during that conversation or not?

A. There was no one at Mr. Hobart's desk with me. Bruce Lindeke was sitting about 3 or 4 feet away from us at his desk.

Mr. Cannon: Who was?

The Witness: Bruce Lindeke, the editor of the *Cannoneer*.

Q. (By Mr. Ryan): He is listed as editor in this paper, the *Cannoneer*?

A. Yes, that is right.

Q. Will you tell us what the conversation was? Tell us what he said and what you said.

A. Yes. Mr. Hobart told me there was a complaint about my writing for the *Cannoneer* staff when I was also on the editorial board of the U.E.-Cannon News. He told me—

Q. That is the C.I.O. paper you have identified?

A. The C.I.O. paper, yes. He told me either I would be forced to resign from the *Cannoneer* staff or I would be forced to stop writing for the Association paper, if I wished to continue my work on the *Cannoneer*. I told him—

Q. Just a minute. You have referred to the Association paper. What paper did you have reference to by the words "Association paper"?

A. Did I use the word "association"?

Q. Yes. [606]

A. I am sorry. That was a mistake. The only

(Testimony of Elsie Monjar.)

question that came up at that time was between my writing for the company paper, which was the Cannoneer, and my writing for the U.E.-Cannon News, which was a C.I.O. paper. There was no question of the Association involved in any way.

Q. Go ahead with the conversation, Miss Monjar.

A. Shall I go back to where Mr. Hobart told me about either writing for the company paper or writing for the C.I.O. paper?

Q. Yes.

A. I told him that to me there was no choice involved there. I said that inasmuch as the Cannoneer was a company paper, which was supposed to represent the attitudes and the interests of the employees of the company, that the question of my personal membership in any organization was not at stake. However, if there were no choice and I would obviously be forced to resign from the Cannoneer and represent the employees in the way I felt they could be best represented, which was through the paper which they controlled themselves, the U.E.-Cannon News, I would.

Q. You had reference to staying with the C.I.O. paper, this U.E.-News?

A. Yes, I did.

Q. Did you resign then?

A. Yes, I resigned at Mr. Hobart's request.

Q. Now, I show you Board's Exhibit 41-A and 41-B. Were [607] both published at the time you were a member of the staff?

A. Yes.

Q. Now, Board's Exhibit 41-C was published after you had resigned, several months after you

(Testimony of Elsie Monjar.)

had resigned; is that right?

A. Yes, that is correct.

Q. Because it is a March publication, 1942. Now, I direct your attention to page 2 of that document, to the first column, to the bottom of the page, where the editorial staff members are listed. I ask you if there are any members on that staff who were C.E.A. officials.

A. Yes. James Barton, Joe Canale, Bob Miller, to the best of my memory John Gibson.

Q. Who was he at that time?

A. He was a member of the board of directors. He was on the staff as a cartoonist.

Q. Pick out the other board of director members on that staff as of March, 1942. James Barton, was he one?

A. Yes. Jim Barton was one. Jim Canale, was a shop steward.

Q. For the Cannon Employees' Association?

A. For the Cannon Employees' Association, yes. Bob Miller, to the best of my memory, was a shop steward for the Cannon Employees' Association. I believe Sarah Scudder was also an Association steward. As to that I am not entirely sure. She was at one time, to the best of my memory. I believe [608] that is all with the addition of John Gibson.

Q. By the way, at least some of these you have mentioned were on the staff, some of these C.E.A. people were on the staff while you were there, is that right, and obviously continued afterward because they remained on the staff?

(Testimony of Elsie Monjar.)

A. Yes, that is true. All of them except John Gibson, who, I believe came on later after I resigned from the staff.

Q. Anyway, while he was on there he was a C.E.A. representative? A. Yes.

Mr. Ryan: I offer Board's Exhibits 41-A, 41-B and 41-C in evidence.

Trial Examiner Batten: Is there any objection?

Mr. Cannon: They are objected to on the ground they are not within the issues laid in the complaint and the amendments there, and therefore have no relevancy to the issues.

Trial Examiner Batten: Of course, I don't believe, Mr. Ryan, that the entire document has; has it?

Mr. Ryan: No. I might say, Mr. Examiner, that I am putting them in to list the members of the editorial staff as of the time she was there, and putting in a later issue. I didn't put in consecutive issues. I wanted to show the C.E.A. representatives were there while she was there, and continued on.

Trial Examiner Batten: Is that the only purpose for [609] offering them?

Mr. Ryan: Yes.

Trial Examiner Batten: Well, isn't that clear in the record, without offering these?

Mr. Ryan: Well, I would like to have the entire listing of staff members in evidence, because it may come out later on some more of those people were C.E.A. representatives.

Trial Examiner Batten: They will be received

(Testimony of Elsie Monjar.)

for that purpose, showing the list of staff associates, and so forth. Does that appear on page 2 of each one of these?

Mr. Ryan: Yes; the same location in the page.

Trial Examiner Batten: They will be received showing the staff of the Cannoneer appearing in the lower left-hand corner of each issue on page 2. You will not need to have duplicates of those.

(The documents heretofore marked as Board's Exhibits Nos. 41-A, 41-B and 41-C, for identification, were received in evidence.)

Q. (By Mr. Ryan): Miss Monjar, you mentioned yesterday one leadman that was a member of the board of directors while you were employed by the company. Can you name any other leadmen that were representatives of the Cannon Employees' Association while you were employed by the company? A. Yes. Joe Canale was a leadman.

Q. What department? [610]

A. Assembly department. He was a shop steward of the Association. Ned Mandella, before he was a full-time representative of the Cannon Employees' Association, was a shop steward. Mel Schwab was—

Q. You say before he was a full-time representative of the Cannon Employees' Association Mandella was a shop steward?

A. He was a shop steward of the Cannon Employees' Association while he was employed by the company. [611]

MONNA MONNETTE NYE,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): Will you state your name, please, Miss Nye? A. Monna Monnette Nye.

Q. What is your address?

A. 3901 Berenice Avenue.

Q. How do you spell that?

A. B-e-r-e-n-i-c-e.

Q. Is that in Los Angeles, California?

A. Yes, it is.

Q. Approximately when did you begin your employ with that Company?

A. March 30th, somewhere in March, of 1941.

Q. In what department did you first work?

A. Department 7.

Q. What department is that, other than by number, can you [617] tell us?

A. Let's see, there is burring in there and bench lathes and drill presses and ribbon centers.

Q. What was your first job?

A. I was on the burr bench.

Q. Did you stay on that job?

A. No. Then I went to the ribbon centers and then I went to the lathe. And later I went up in the machine shop. Then I went on to the automatics.

Q. Who was your foreman when you first went to work there? A. Glen McClung.

Q. Did he continue to be your foreman all of the time you were there?

(Testimony of Monna Monnette Nye.)

A. No. Bill Yockey was our foreman for a while.

Q. When was McClung your foreman?

A. Well, let's see,——

Q. What jobs were you doing?

A. Well, he was my foreman—he put me on the lathes, I think. I can't remember. It has been quite a while ago.

Q. By the way, are you still employed by the company? A. Cannon?

Q. Yes. A. No.

Q. When did you leave the employment of the company?

A. They fired me in June, June 12, 1943. [618]

Q. At the time of your discharge, who was your foreman?

A. He was the foreman in the machine shop. I forget his name.

Q. At that time? A. Yes.

Trial Examiner Batten: Who was your foreman?

The Witness: I forget his name. He was a little, short fellow.

Q. (By Mr. Ryan): He was the foreman of the machine shop? A. I forget his name.

Trial Examiner Batten: I notice the complaint says June 15th. The witness said June 12th.

The Witness: Our time cards weren't there June 12th.

Q. (By Mr. Ryan): That is the date you recall now?

(Testimony of Monna Monnette Nye.)

A. We went to work, yes, and our time cards weren't there.

Trial Examiner Batten: You mean on the day of the 12th?

The Witness: On the day of the 12th when we went to work.

Mr. Cannon: She left the plant on June 12th.

Mr. Ryan: I move to amend the complaint to correct the date in that respect, on her discharge.

Trial Examiner Batten: With no objection, the amendment will be allowed.

Q. (By Mr. Ryan): Miss Nye, after you were employed by the company, within the first few days or weeks after you had [619] begun working for the company, did it come to your attention there was an association being formed in the plant of the employees?

A. There was a recreation sports club, or something like that.

Q. Was it Cannon Recreation Association?

A. Yes.

Q. How did it first come to your attention there was such an association among the employees?

A. After I had been there a while, I was in the rest room——

Q. About how long, Miss Nye?

A. A month or so, something like that; a month or two. And they asked me if I was going to join this sports club.

Q. Who asked you, Miss Nye?

A. There is a girl named Jeanne something, I forget her last name.

(Testimony of Monna Monnette Nye.)

Q. Where were you at the time?

A. I was in the rest room. The one where Sarah Scudder had the first rest room there.

Q. Who was Sarah Scudder?

A. She was the Matron.

Q. The Matron in the employ of the company?

A. Yes.

Q. What generally were the duties of the Matron?

Mr. Cannon: I object to that as calling for her conclusion. [620]

Trial Examiner Batten: If she knows.

Q. (By Mr. Ryan): If you know.

A. You know, if we got sick or something like that, she would take care of us, or she would give us nickels, keep the rest room clean and issue us lockers, I think it was.

Q. Was there one stationed at each women's rest room?

A. Yes, there was.

Q. Now, in that rest room did you see any bulletin regarding this Association?

A. Yes, when they asked us to join this sports club they asked us to sign something, sort of like a bulletin. It was taped up on the wall, and we signed our names to it.

Q. You say when they asked you. We have to know who these people are.

A. This girl Jeanne, I don't know her last name.

Q. Was there an occasion about a month after you went there when she asked you to join this Association?

A. She asked me if I was going to join. And

(Testimony of Monna Monnette Nye.)

Sarah said it was something about sports and it was a nice club, or something like that.

Q. Sarah Scudder?

A. The Matron in there.

Q. Was she there at the same time this Jeanne was talking to you? A. Yes. [621]

Q. The two of them were talking about it?

A. Yes.

Q. Were there other girls in the rest room at the time, also? A. Yes.

Q. Go ahead and tell us what the conversation was, now.

Trial Examiner Batten: What did this other girl do whose name you don't remember?

The Witness: First of all, we signed this petition. The dues were 50 cents a month——

Trial Examiner Batten: What is the name of the girl you said asked you to sign it?

The Witness: Jeanne?

Trial Examiner Batten: Yes.

Mr. Ryan: Yes.

Mr. Cannon: She collected the dues afterward.

Trial Examiner Batten: What did she do for the company? What was her job? Where did she work?

The Witness: I think she was in Department 2 at the time; I don't remember. I remember she was in Department 2 one time, I think. But maybe not then, because she was a new employee, too, at that time.

Trial Examiner Batten: I don't think it is ma-

(Testimony of Monna Monnette Nye.)

terial, anyway. She was just an employee like you; wasn't she?

The Witness: Yes. [622]

Q. (By Mr. Ryan): Did you sign up one of the Association petitions there in the rest room on that occasion? A. Yes, I signed that petition.

Q. Did you pay any money to the Association there?

A. They had to get my card first. Then she got my card.

Q. Jeanne did?

A. Jeanne did, yes. Then I give her 50 cents and she would punch it.

Mr. Ryan: Miss Reporter, will you please mark this document as Board's exhibit next in order?

(The document referred to was marked as Board's Exhibit No. 42, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 42 for identification what purports to be a card for the Cannon Employees Recreation Association, a dues card. I show it to counsel.

Q. (By Mr. Ryan): Miss Nye, I show you Board's Exhibit 42 for identification, and direct your attention to the name appearing thereon in ink, Monna Nye, and ask you if that is your name? Is that your signature?

A. No, I don't think that is my signature. They gave us the card and our name was on it.

Q. I see. Who gave it to you?

A. This girl Jeanne.

(Testimony of Monna Monnette Nye.)

Q. When did you receive this card, as best you can remember? [623]

A. Well, about two or three months after I had been there.

Trial Examiner Batten: Speak a little louder, Miss Nye.

The Witness: About two or three months after I had been there, I forget just when, within a couple of months. May is the first time I paid dues there.

Mr. Cannon: Then you received it in May, is that the idea?

The Witness: That is when I paid my first 50 cents.

Q. (By Mr. Ryan): Now, I notice that on across the bottom of the card there are dates for January, February, March, April and so on, for an entire year. Below the month of May and below the month of June there are two holes punched out. Will you tell us what that means, what that refers to?

A. That means I gave Jeanne the 50 cents for May and the 50 cents for June.

Q. Do you recall, as you paid her the dues, she punched that card out for the month?

A. Yes; she had a little punch.

Q. Two holes are punched there, one for May and one for June. What does that indicate?

A. That means I didn't pay dues before or after, it looks like.

Q. It does mean you did pay dues for those two months; is that right? A. Yes. [624]

(Testimony of Monna Monnette Nye.)

Mr. Ryan: I offer this little card in evidence, Board's Exhibit 42 for identification.

Trial Examiner Batten: If there is no objection it will be received.

(The document heretofore marked as Board's Exhibit No. 42 for identification, was received in evidence.)

[Printer's Note:] Board's Exhibit No. 45 is set out in full at page 694 of this printed Record.

Q. (By Mr. Ryan): At the time you paid your dues, during May and during June, was that May and June of 1941? A. Yes, sir.

Q. At the time you paid those dues, can you tell us where you paid them, on each occasion where you were? A. In the rest room.

Mr. Cannon: She said she paid them at one time to this Jeanne.

Q. (By Mr. Ryan): Did you pay two months' at one time? A. No. No, I saw Jeanne twice.

Q. Where did you see her on the occasions, each of the occasions you paid these dues?

A. Most always in the rest room. That is about the only time we had a chance to see one another. She would get her punch out.

Q. Was that during your working hours?

A. That was just before our working hours, in the rest room.

Q. In the morning? [625]

A. In the afternoon. I worked the swing shift.

Q. At the same time you paid those dues that

(Testimony of Monna Monnette Nye.)

you did pay during May and June, 1941, on those specific occasions, did you observe her collecting from other girls there in the rest room?

A. Yes.

Q. Did you at any time after you began to work for the company, and in the summer of 1941, particularly have occasion to join any other labor organization? A. Yes.

Mr. Cannon: I object to the words "any other labor organization" because no evidence has been presented here that was a labor organization.

Trial Examiner Batten: I suppose the Board contends it is. I will have to decide it. As I said once before, the questions you attorneys ask, I am not going to draw any inference from those.

The Witness: In July, July 17th I joined the U.E.-C.I.O.

Q. (By Mr. Ryan): You joined the United Electrical, Radio and Machine Workers, C.I.O.?

A. Yes, I did.

Q. Did you cease to be a member of this recreation association you had joined, or this association that was represented by that card that was just introduced in evidence?

A. I didn't pay dues after that to C.E.A. [626]

Q. By the way, at the time that you were paying these dues that you did pay in May and June, was it brought to your attention that there was an Association known as the Cannon Employees' Association in the shop?

A. Well, it was starting to change or something,

(Testimony of Monna Monnette Nye.)

because right after that they started to pay a dollar a month, or something like that. Shortly after then they started paying a dollar a month to the C.E.A.

Q. Were the names used interchangeably, to your knowledge?

A. We all talked about it. We would say something and sometimes we would say something else, and it was all the same idea.

Trial Examiner Batten: The question to you is: Do you know this card you had here was for the Cannon Employees' Recreation Association.

The Witness: It wasn't recreation afterward, just Cannon Employees' Association.

Trial Examiner Batten: After what?

The Witness: Just shortly after I went into the C.I.O., if I remember correctly.

Q. (By Mr. Ryan): They started calling the association the Cannon Employees' Association?

A. We always just called it the C.E.A.

Q. Now, after you became a member of the C.I.O., did you wear your C.I.O. button? [627]

A. Yes.

Q. In the shop? A. Yes.

Q. Were you there when the first National Labor Relations Board election was held?

Trial Examiner Batten: What is your answer? Were you there when the first Board election was held?

The Witness: Yes.

Q. (By Mr. Ryan): After that election was held, did you have occasion to be approached by

(Testimony of Monna Monnette Nye.)

Mr. Andy Bereznak and anyone else connected with the Association?

A. I was on the ribbon centers and Andy Bereznak and Ray Lampkin came around and asked me if I joined the C.E.A.

Q. About how long after the National Labor Relations Board election do you estimate it was that they came to you?

A. About a week, I think.

Q. About a week later?

Mr. Cannon: Bereznak and who else?

The Witness: Ray Lampkin. He was a leadman on the ribbon centers.

Q. (By Mr. Ryan): Was he your leadman?

A. Yes, he was my leadman.

Q. Where did Bereznak work at that time; do you know?

A. I don't remember. I think he worked in the paint shop.

Q. Do you know he didn't work in your particular department? [628]

A. No, he didn't work in our department.

Q. What time of day, approximately, was it when he came to you?

A. It was in the afternoon some time before rest period, before 5:00 o'clock.

Q. While you were on your shift?

A. I was working on the ribbon centers when they came around and asked.

Q. Did they come together, these two gentlemen you named?

(Testimony of Monna Monnette Nye.)

A. Yes. Whatever line they would go to the lead-man would go around with them. At least, he did on our line, because I saw them go to other places, too.

Q. What was the conversation when they approached you, Miss Nye?

A. Well, Andy asked me if I had joined the C.E.A., and he says it was a pretty good organization. He says, "Maybe if we all work together we could make it function right." I wouldn't quote him, but that was the general idea.

Ray Lampkin said, "Yes, it would stop all this friction that is in the plant." And that there would be peace again. Would I join, something like that.

Q. Did you then sign up a C.E.A. card?

A. After the first election, I did.

Q. Was that before the first election or after the first election? [629]

A. That was after the first election.

Q. Then were you approached thereafter by Bereznak again on any occasion about the C.E.A.?

A. They asked me several times before I finally did. On this last time I did.

Q. About how many times were you approached?

A. If I remember correctly, a couple or three times.

Q. In how short a period?

A. Oh, let's see. The first time he approached me it was about a week after the election. Then I think it was about a month before I finally did go with the C.E.A.

(Testimony of Monna Monnette Nye.)

Q. Did Bereznak approach you again during that month? A. Yes. It was mostly Andy.

Q. Was it about a month after the first time he asked you again?

A. A month or three weeks, something like that.

Q. Was it at the same place he approached you again that he approached you on the first occasion?

A. I remember twice he approached me at my machine. I forget what other place it was he approached me.

Q. On the second occasion when he approached you, who was present?

A. Ray. It was mostly always with Ray.

Trial Examiner Batten: Who is Ray?

The Witness: Ray Lampkin. He was our lead-man on the [630] ribbon centers.

Q. (By Mr. Ryan): At the same time that Bereznak approached you, did you also observe that he approached anyone else in your department on that occasion?

A. Yes, he was going around to all the people that hadn't as yet signed up.

Q. Did you see him doing that?

A. Yes. He went all down our line on the ribbon centers.

Trial Examiner Batten: Was Mr. Lampkin with him when he did that?

The Witness: Yes, on the ribbon centers. Not on the others, no, because he wasn't leadman there.

Q. (By Mr. Ryan): Did you ever have occasion to observe an election of the Cannon Employees'

(Testimony of Monna Monnette Nye.)

Association being held there at the plant while you were employed?

A. You mean in with the C.E.A. and C.I.O.?

Q. I am not talking about the Labor Board election. I am talking about the election of officers for the 'Cannon Employees' Association.

A. Yes, there was, I think, about three.

Q. About three elections? A. Yes.

Q. Will you tell us about when it was when you first saw the first election being held there at the plant?

A. The first one, if I remember, was in the cafeteria. [631]

Q. About when was that?

A. It was after the first elections because we were starting to elect a board of directors, a new board of directors.

Q. After the first Labor Board election?

A. After the first Labor Board election.

Q. About how long after that, to the best of your recollection? A. Oh, a couple or three months.

Q. Will you tell us about that election? You say it was held in the cafeteria? A. Yes.

Q. How long approximately were the polls open, the voting hours? A. All day.

Q. All day long? A. Yes.

Q. Did you vote in that election?

A. Yes, I voted in it.

Q. Where was the ballot box located? Was that in the cafeteria?

A. It was on one of the tables in there.

Q. In the cafeteria? A. Yes.

(Testimony of Monna Monnette Nye.)

Q. Were you given a ballot to vote by? [632]

A. Yes, we were given a ballot and we had—if I remember we had to sign something, too.

Q. Sign some register or something?

A. Yes, if I remember correctly.

Q. Now, after you received your ballot where did you go to mark it? Was there a place set aside for you to mark your ballot?

A. We just all marched around the tables, around there. There were pencils, you know, for everyone to use.

Q. Were there any voting booths? A. No.

Q. It was just out in the open on the tables?

A. Yes.

Q. Who was in charge of the voting table and the ballot boxes and the ballots, if anyone?

Mr. Cannon: I object to that as calling for a conclusion.

Trial Examiner Batten: She may tell us who was there at the time, if she knows.

The Witness: There was—I was there to see the ballot box wasn't stuffed. And Andy Bereznak and let's see——

Trial Examiner Batten: Were you there all day?

The Witness: No, I was there—let's see. I was there before I went to work in the afternoon and just a little bit afterwards. Then I was there at supper time, just a little bit [633] before and a little bit afterward, so I would have time to get out there. Then I was there after work, that night after I came off our shift.

(Testimony of Monna Monnette Nye.)

Q. While you were there, who else was there?

A. Andy.

Q. Bereznak? A. Andy Bereznak.

Q. And who else?

A. I can't remember who else was there. There was about four or five people there to watch the box.

Q. Now, at the time that you were on shift, you didn't stay there all day and watch the ballot box. Who took care of the box while you were gone, if you know? How was that taken care of?

A. I don't remember. I think they were given to the guards, or something.

Q. Plant guards?

A. Yes. The office out there where the guards are, but I don't remember exactly.

Trial Examiner Batten: You don't know who was there when you were gone; do you?

The Witness: No, I don't know who was there when I was gone.

Q. (By Mr. Ryan): Did you have anything to do with making any arrangements for the guarding of the ballot box during [634] the time that you were to be away on your shift? A. No.

Q. Now, did you take any part in the counting of the ballots for that election? A. Yes.

Q. Where were the ballots counted?

A. Let's see, I think they were upstairs in one of the conference rooms, something like that.

Q. There at the plant? A. Yes.

Q. Who took part in the counting?

A. Let's see, I think there was Mandella.

(Testimony of Monna Monnette Nye.)

Q. Ned Mandella?

A. Ned Mandella, and Andy Bereznak and Shirl Barnett and Clarence Armant, and Vivian Sullivan——

Q. She was a fellow employee?

A. Yes. And let's see, that is about all I can remember of the people that were there.

Q. Did Shirl Barnett, was he a representative of the C.E.A., so far as you know, at that time?

A. He was running on the ballot.

Q. He was one of the candidates?

A. One of the candidates.

Q. Was that the time when Clarence Armant was running for membership on the board of directors? [635]

A. Yes.

Q. Did you mention Floyd Izsom as one of the counters of ballots?

A. Yes, I think he was there, too.

Trial Examiner Batten: You say you think. Do you recall whether he was or he wasn't?

The Witness: I wouldn't swear on a stack of Bibles he was there, but I think he was.

Q. (By Mr. Ryan): Now, did you know Clarence Armant?

A. Yes.

Q. Did you have occasion to be working in the shop one day, about the latter part of August, 1942, when some of the employees left their work and went into the cafeteria?

A. Yes.

Q. In connection with matters involving Armant; do you know?

A. Yes.

(Testimony of Monna Monnette Nye.)

Q. Will you tell us just what happened that afternoon while you were at work?

A. Well, it was around 5:00 o'clock and we were on our rest period. I was in the rest room and I saw all the girls from back in the assembly start running by. Well, I didn't know what it was, so I ran out and asked them where they were going. If I remember correctly I asked Mabel Peasley.

Q. Was she an employee in the assembly department?

A. She worked back in there. There were other people back [636] there, too. I don't remember the names of some of the other girls, that I asked. I asked where they were going.

They said they were going to a production meeting in the cafeteria.

I asked them several times as they went back where they were going, and they were all going to this meeting in the cafeteria.

Q. Prior to the time when you saw these girls going into the cafeteria and you talked to this Peasley girl, had you seen Barnett, Andy Bereznak or Izsom?

A. I saw them out there. I saw them talking to different people.

Q. How long before you saw the girls going toward the cafeteria?

A. It was before the rest period I saw them out there, but I didn't think anything of it because they were always going around and talking like that.

Q. You saw Barnett and Bereznak going through the department; did you?

(Testimony of Monna Monnette Nye.)

A. Yes, and Floyd Izsom. And let's see who else. That is about the only ones I remember seeing. They were pointing to go out in the cafeteria with their thumbs, like this (indicating).

Q. Barnett and Bereznak?

A. Yes. I went to my rest period, and all these girls [637] started flying by.

Q. What did you do then? Did you go with them?

A. I thought if it was a production meeting we would naturally be involved.

Q. Where did you go? You were there at the rest room. Where did you go? Did you go back to your department?

A. I went back to my department. I thought maybe they were going by departments. We never did leave.

Q. Did you ask anybody whether you should or not?

A. I remember asking somebody if we were going to go, and I got a definite answer no we wasn't going to go. But I don't remember who it was.

Q. Anyway, you didn't go to the cafeteria?

A. I didn't, no.

Q. Did you keep on working?

A. Yes, we went back to our machines and went to work.

Q. Did the other people in your department keep on working? A. Yes, all of us.

Q. Did you observe the others were working, too?

A. Yes. Those men didn't come in our department.

Q. By "those men" whom do you refer to?

A. Andy Bereznak and Floyd Izsom and Shirl Barnett; those three. [638]

* * * *

VIVIAN MARY SULLIVAN,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): Will you state your full name, please, Miss Sullivan?

A. Vivian Mary Sullivan.

Q. What is your address, please?

A. 3901 Berenice Avenue.

Q. That is here in Los Angeles, California?

A. Los Angeles 31.

Q. Miss Sullivan, were you ever employed by the Cannon Manufacturing Corporation?

A. Yes.

* * * *

Q. (By Mr. Ryan): Miss Sullivan, would you tell us approximately when you began to work for this Company? A. April 9, 1941.

Trial Examiner Batten: What year? [652]

The Witness: 1941.

Q. (By Mr. Ryan): In what department did you begin to work for the company?

A. Department 11.

Q. Who was your foreman?

A. Glen McClung.

(Testimony of Vivian Mary Sullivan.)

Q. How long did you remain in that department?

A. Oh, about a year and a half, I believe.

Q. Are you still employed by the company?

A. No, I was fired June 12th.

Q. June 12th? A. Yes.

Q. What year? A. 1943.

Q. 1943? A. That is right.

Q. Were you in that department when you left the employ of the company?

A. I was in the machine shop.

Q. Who was your foreman?

A. His last name was Bingham; Mr. Bingham.

Q. Bingham? A. Yes.

Q. Now, Miss Sullivan, while you were employed there and during the early part of your employment, did you have occasion [653] to learn of the existence of an organization known as Cannon Recreation Association?

A. I was in the rest room at the time when Sarah Scudder, the matron, was telling us that it would be a nice recreation to join, we would have swimming, horseback riding and that.

Q. About how long had you been employed there by the company at that time?

A. It was a few weeks.

Q. A few weeks? A. Yes.

Mr. Cannon: Pardon me. Is that the same conversation when Miss Nye was present?

The Witness: No, she wasn't present at the time.

Q. (By Mr. Ryan): You were in the rest room. Was anyone present, other than you and Miss Scudder?

(Testimony of Vivian Mary Sullivan.)

A. Oh, yes, there was a group of girls, Nina Kantor and there was Jean Cassidy, who was in. It was before we started to work.

Q. They were all fellow employees?

A. Yes, they were.

Q. Was this matron on the job there at the time, at the rest room?

A. It was just before working time, and she was in there telling us about it.

Q. Was it before her working period? [654]

A. Yes.

Q. And she was telling you about this recreation association?

A. Yes, that it would be a good association to join.

Q. Did you then sign up with the association?

A. I joined up, but I asked Jean Cassidy, she was the girl who was taking the cards, the names, and punching them. I asked her for a card and she said she didn't have any, and told me to get one at the tool crib window from Andy Bereznak and Ned Mandella.

Q. At the time you asked Jean Cassidy what you have testified to, was that on the same occasion you just related as to this conversation with Miss Seudder?

A. No, that was a few days after that I asked Jean for a card and she was out of them.

Mr. Ryan: Miss Reporter, will you mark this for identification, please?

(Testimony of Vivian Mary Sullivan.)

(Thereupon, the document referred to was marked Board's Exhibit No. 44, for identification.)

Q. (By Mr. Ryan): Miss Sullivan, I show you what has been marked as Board's Exhibit 44, for identification, purporting to be a Cannon Employees Recreation Association dues card, and ask you whether or not the name Vivian Sullivan appearing thereon is your name?

A. Well, there was a correction, in my birth certificate. At the time I sent to Sacramento for a change. In the meantime, [655] my mother died and I couldn't get it fixed up.

Q. This is your name (indicating)?

A. Yes, but it was a mistake on the birth certificate.

Mr. Cannon: I will stipulate that is her card, if you say it is.

Mr. Ryan: All right.

Q. (By Mr. Ryan): I notice on the bottom of the card in the column for dues check-offs, there is a punched out mark for June and the word "Pd." in May. Does that indicate that you paid dues to the Recreation Association?

A. Yes, I paid fifty cents each month, one is for May and one is for June.

Q. 1941? A. Yes.

Q. Where did you obtain that card from, in the first place?

A. I obtained it from Ned Mandella at the tool crib window.

(Testimony of Vivian Mary Sullivan.)

Q. The first time that the card indicates you paid dues was in May. Was that the time you got the card, about May, 1941?

A. Yes. I had to go to the tool crib window for it.

Q. On the occasion when you went to the tool crib to see Mandella about getting the card, was that during your working hours?

A. No, it was when lunch period was supposed to be started.

Q. Was Mandella working at the tool crib? [656]

A. He was there.

Q. Did you pay any money to him at the time you got the card, any dues?

A. I paid fifty cents then, and then the next month I paid fifty cents more at the tool crib window.

Q. You went to the tool crib window on both occasions to pay? A. Yes.

Q. And you paid Mandella?

A. Yes, and Andy Bereznak was there.

Q. After June did you have occasion to join any other labor organization?

Mr. Cannon: I object to the words "Other labor organization."

Q. (By Mr. Ryan): I will ask you if you had occasion to join the C.I.O. organization?

A. I joined the C.I.O. organization.

Q. Was that the United Electrical, Radio and Machine Workers, C.I.O.? A. Yes, it was.

Q. About when was it that you joined that organization?

(Testimony of Vivian Mary Sullivan.)

A. I believe either the latter part of June or some time in July.

Q. 1941? A. 1941. [657]

Q. Thereafter did you wear a C.I.O. button?

A. Yes, I did.

Q. Then thereafter the Cannon Employees' Association won a Labor Board election; is that right, in September, 1941? A. Yes.

Q. Thereafter a contract was entered into between the Cannon Employees' Association and the company; do you remember? A. Yes.

Q. Did you sign up with the C.E.A. after the election or after the contract was executed?

A. I signed up. They started taking dues out in '42. I signed up.

Q. After the C.E.A. contract was entered into in the fall of 1941, did you sign a membership card in the C.E.A.?

A. I don't believe I did. I signed to take out dues.

Q. Is that all you recall of signing?

A. That is all I recall.

Q. That slip you signed authorized the company to deduct C.E.A. dues from your paycheck, is that right, under the contract? A. Yes.

Q. Did you continue in the C.I.O., however, to be a member of the C.I.O.?

A. Off and on. [658]

Q. Off and on? A. Yes.

Trial Examiner Batten: What do you mean "off and on"? Do you mean sometimes you were a member?

(Testimony of Vivian Mary Sullivan.)

The Witness: Sometimes I didn't pay my dues.

Trial Examiner Batten: You mean in the C.I.O.?

The Witness: C.I.O. I paid dues in the C.E.A. when I had to have my dues deducted.

Trial Examiner Batten: You mean when you paid dues in the C.E.A. you did not pay dues in the C.I.O.; is that what you mean?

The Witness: There was quite some time I didn't pay, but I don't know if it was at that time.

Q. (By Mr. Ryan): Then did you become an Executive Board member at any time of Local 1013, U.E.-C.I.O., while you were employed by the Cannon Company?

A. I am not sure. I might have been on it, but I am not sure.

Mr. Ryan: Miss Reporter, will you mark this document as Board's exhibit next in order, please.

(Thereupon, the document referred to was marked Board's Exhibit No. 45, for identification.)

Trial Examiner Batten: Do you have any record of having been elected or being on the Executive Board of the C.I.O.?

The Witness: The only thing was if it was for parties [659] and that.

Q. (By Mr. Ryan): Of the C.I.O.?

A. Yes, if anything.

Mr. Ryan: I have had marked as Board's Exhibit 45, for identification, a document entitled "Open Letter to Workers of Cannon and C.E.A.",

(Testimony of Vivian Mary Sullivan.)

which bears the date the 5th month, 26th day, 1943.
I show it to counsel.

Miss Reporter, please mark this document as
Board's Exhibit next in order.

(Thereupon, the document referred to was
marked Board's Exhibit No. 46, for identifica-
tion.)

Q. (By Mr. Ryan): Miss Sullivan, I show you
what is marked Board's Exhibit 46, for identifica-
tion, and ask you whether or not you ever saw the
document before? A. Yes.

Q. Will you tell us what it is?

A. I was there.

Q. Will you tell us what it is?

A. We called their bluff, so I was on the Board
of Directors at that time.

Trial Examiner Batten: What is that? I didn't
hear.

Mr. Cannon: "We called their bluff. I was on
the Board of Directors."

Q. (By Mr. Ryan): Now, the document starts
off, "We, the Executive Board Members of Local
1013, U.E.-C.I.O. reaffirm [660] our stand that we
will not join the C.E.A." A. That is right.

Q. This was in May, 1943, that the document
was published; is that right? A. That is right.

Q. The names affixed to that document——

A. We signed our names.

Q. ——are yours and Vivian Sullivan——

A. That is right.

Q. ——and Monna Nye? A. Yes.

(Testimony of Vivian Mary Sullivan.)

Q. Is that the girl that just testified prior to your being on the stand? A. She did.

Q. And the rest of the people listed here on the document constitute the Executive Board Members of Local 1013, U.E.-C.I.O.; is that right?

A. Yes.

Q. You had this document printed; did you?

A. We had it printed right where our headquarters were.

Trial Examiner Batten: What is it, mimeographed?

The Witness: Mimeographed.

Mr. Ryan: Mimeographed.

Q. (By Mr. Ryan): It was mimeographed at the C.I.O. offices; wasn't it? [661] A. Yes.

Q. After it was printed, what did you do with it, if anything?

A. We stood outside the gate and passed them out.

Q. Outside of the gate of the Cannon plant?

A. Outside of the gate of the Cannon plant, to the workers going in.

Q. You and these other people that are listed on the bulletin?

A. The other people and myself.

Q. The other people refer to the people whose names appear on the bulletin?

A. Yes, they were all employees at that time.

Q. They were all employees of Cannon at that time; is that right? A. Yes.

Mr. Ryan: I have had marked as Board's Ex-

(Testimony of Vivian Mary Sullivan.)

hibit 46, for identification, a document purporting to be a notice of hearing, listing Cannon Employees' Association, a non-profit California corporation, Complainant, vs. Louis Turnie, Mary Donovan Tankeson, Erma Evenstad, Vivian Sullivan, Monna Nye, Joan Lawrence, William Youngberg and Donald M. McClellan, Defendants. It is a five-page document, with a sixth page attached to it listed as Exhibit A. I show it to counsel.

Miss Reporter, please mark this document as Board's exhibit next in order. [662]

(Thereupon, the document referred to was marked Board's Exhibit No. 47, for identification.)

Q. (By Mr. Ryan): Miss Sullivan, I show you what has been marked as Board's Exhibit 46, for identification, and ask you if you ever saw that before, or a copy of it? A. Yes, I have.

Q. When did you see it first?

A. Well, when they gave us the notice of the hearing.

Q. How did you receive the document, in the mail or from some person?

A. It was from some person outside of the gate, or inside the gate at the time, who handed it to me. I am not sure if it was Andy Bereznak or who, but someone from the Board of Directors.

Q. Of the Cannon Employees' Association?

A. Of the Cannon Employees' Association.

Q. Did you receive it about the time, within a

(Testimony of Vivian Mary Sullivan.)

few days, after you had published and circulated this document which is Board's Exhibit 45?

A. Yes, I did.

Q. As a result of your receipt of Board's Exhibit 46—by the way, the other people named in Board's Exhibit 45 also received a copy of Board's Exhibit 46; is that right?

Mr. Cannon: If she knows.

Q. (By Mr. Ryan): Do you know? [663]

The Witness: What?

Mr. Cannon: Do you know?

Trial Examiner Batten: If you know, did the other people named there get a copy of this notice of hearing, and so forth?

The Witness: Well, if I am not mistaken, I think Monna Nye did with me. I wasn't with them at the time. I was coming to work at the time.

Q. (By Mr. Ryan): I see. I now show you Board's Exhibit 47, for identification, Miss Sullivan, and ask if you ever saw that before?

A. Yes.

Q. It is purportedly a letter to the Board of Directors of Cannon Employees' Association, 215 West Avenue 33, Los Angeles, California, dated June 8, 1943, from Louis Turnie, Vivian Sullivan, Joan Lawrence, Donald McClellan, Erma Evenstad, Monna Nye, and William Youngberg, and ask if that was published by yourself and these other persons named in the document? A. Yes.

Q. And circulated among the employees of the company? A. Yes.

(Testimony of Vivian Mary Sullivan.)

Q. Did you distribute that at the gate?

A. At the gate, outside of the gate.

Q. Did you notify the Board of Directors of the Cannon [664] Employees' Association of the contents of the document?

A. Well, we did tell them that we would not appear.

Q. You told them that you would not appear for the hearing that was set forth in Board's Exhibit 46; is that right? A. Yes.

Q. You did not appear then for the scheduled hearing? A. No; it was called at 4:30.

Q. In the afternoon?

A. In the afternoon, and we were supposed to be working.

Q. All of you people were supposed to be working that were being called as defendants?

A. I don't know about two of them, but the rest of us.

Q. But those of you wouldn't answer because it would mean your leaving your jobs?

A. We didn't want to leave our machines during wartime.

Q. Thereafter, after you had circulated Board's Exhibit 47, Miss Sullivan, did you continue to work for the company?

A. We worked until June 12th, when they fired the girls.

Q. Will you tell us what happened on June 12th?

A. It was my day off. We rotated days off in the machine shop; the girls, Monna and Erma, and then

(Testimony of Vivian Mary Sullivan.)

went to work. Their cards were not there and neither was mine, and they called me up.

Q. Who called you up?

A. The girls, Monna and Erma. They said my card wasn't [665] there.

Q. Monna Nye and Erma Evenstad?

A. Yes.

Mr. Cannon: I object to that as being hearsay.

Trial Examiner Batten: You may tell us.

Q. (By Mr. Ryan): Go ahead.

A. They said my card wasn't there and they were fired. And that I probably was fired, also. I went back to work a few days later.

Trial Examiner Batten: You say a few. Was it the next day or several days later?

The Witness: I knew as long as my card was out——

Trial Examiner Batten: That wasn't my question. Was it the next day or several days?

The Witness: About two days.

Trial Examiner Batten: Two or three days later?

The Witness: We didn't work Sunday and I didn't go Monday. I went Tuesday, I believe, or Wednesday, somewhere around there.

Q. (By Mr. Ryan): When you went back to the plant after this conversation with Monna Nye and Erma Evenstad, whom did you see at the plant?

A. I went in to see if my card was there, but it wasn't.

Q. At the time clock, you mean?

(Testimony of Vivian Mary Sullivan.)

A. At the time clock. So I went into Hawkinson's office. [666]

Q. Superintendent Hawkinson?

A. Superintendent Hawkinson.

Q. When you got into his office, who was there?

A. Harold Jorgensen was there, his secretary, and me.

Mr. Cannon: Pardon me. You say Jorgensen was there, and who else?

The Witness: Hawkinson.

Q. (By Mr. Ryan): Was Hawkinson present, also? A. He was there, yes.

Q. In the office? A. Yes.

Q. Was anyone else present besides Hawkinson and Jorgensen and yourself?

A. Because I went in before I was due for swing shift.

Q. You got there a little ahead of time that you would normally have gone to work on the swing shift; is that right? A. Yes.

Q. Now, have you identified everybody that was in the office at that time? A. Yes.

Q. There were three of you in there?

A. The three of us.

Q. Was there a conversation had?

A. I told them that the girls told me my time card wasn't there that Saturday. And he said that—— [667]

Q. Who said?

A. Hawkinson, and told me I was fired. And

(Testimony of Vivian Mary Sullivan.)

Howard Jorgensen said he was sorry to see us kids go.

Q. Did you ask him why you were fired?

A. I didn't ask them why. I didn't say anything more. They helped me check in my tool checks, and I left.

Q. Well, wasn't anything said as to the reason you were being let go, Miss Sullivan?

Mr. Cannon: She said not.

Trial Examiner Batten: Was there any further discussion there?

The Witness: Well, they said that all of us who signed the leaflets were being fired.

Trial Examiner Batten: Who said that?

The Witness: Superintendent Hawkinson.

Trial Examiner Batten: Try and recall just what he said to you. When you first went in, for instance,—that is the easiest way to tell us—who talked first?

The Witness: I asked Mr. Hawkinson if I was fired or if I was to go to work that day.

And he said, "No, you are fired."

Trial Examiner Batten: Did he say anything else at that time?

The Witness: Not at that time, no.

Trial Examiner Batten: Who talked next? Did you say [668] anything then?

The Witness: No. He said he would get it straightened up right away, for me to check out. I asked him why. And he said on account of signing this petition that we refused to join—pay dues and join this C.E.A.

(Testimony of Vivian Mary Sullivan.)

Trial Examiner Batten: Was anything else said during the time you were there, by anybody?

The Witness: Howard Jorgensen, the secretary, said he was sorry to see us kids go, we were good workers.

Trial Examiner Batten: Do you recall anything else that was said during the time you were there by you or any of the other people?

The Witness: No. I went to Glen McClung and shook hands with him. He said he was sorry; the foreman. He said we were good workers and they shouldn't have done that.

Trial Examiner Batten: Did you receive your pay that day?

The Witness: I got my check, and later on I got a vacation check, I believe it was, that I was entitled to. But they didn't want us to take vacations, they asked us to work instead of taking a vacation.

Trial Examiner Batten: You mean the company mailed you a vacation check; is that right?

The Witness: Later on, yes. I received my check for the week, two weeks. [669]

Mr. Ryan: Have you completed your questions?

Trial Examiner Batten: Yes.

Q. (By Mr. Ryan): Have you worked for the company since that time?

A. Since I was fired? No.

* * * *

Cross-Examination

* * * *

Q. Well, now, this open letter you speak about to workers of Cannon, C.E.A., which is dated

(Testimony of Vivian Mary Sullivan.)

5-26-43, who prepared that, [681] if you know?

A. We prepared it in the office on Pasadena Avenue before work.

Q. You say you did? A. We.

Q. What did you have to do with it, if anything? It is Board's Exhibit 45.

A. We all had something to do with it.

Q. What did you have to do with it?

A. At that time I was on the Board of Directors.

Q. What did you have to do with the preparation of this document, Board's Exhibit 45?

A. Let me read it. All of us on this who signed this letter agreed that we would not join the C.E.A., and we all talked it over.

Q. You talked it over, and then did you dictate that letter yourself (indicating)?

A. We drew it up ourselves. [682]

* * * *

Q. (By Trial Examiner Batten): The question to you is: Did you know that the second contract which the C.E.A. had had a closed shop clause in it? Didn't it? A. Well, yes, after they——

Q. You knew that; didn't you?

A. Yes, I knew that.

Q. You also knew, didn't you, under that contract you were [687] supposed to belong to the C.E.A. and pay dues? Didn't you?

A. But we didn't get to vote for it, or anything.

Q. Whether you did or not, you knew it was a closed shop; didn't you? A. Yes.

Q. You knew it was a closed shop contract?

(Testimony of Vivian Mary Sullivan.)

A. Oh, yes.

Q. And you know that under a closed shop contract you have to pay dues, you have to be a member of the organization that has the closed shop? You know that; don't you?

A. Yes.

Q. (By Mr. Cannon): And you knew that was the reason you were discharged, is because you hadn't, and refused to pay dues or join the C.E.A., isn't that correct?

A. No. They fired us because we signed that.

Q. Who did? A. Who?

Q. Who fired you? A. Cannon's.

Q. Whoever told you in Cannon's you were fired for that reason? A. Who did?

Q. Yes. A. Hawkinson. [688]

Q. What did he tell you?

A. He said I was fired—we were fired for—well, what was in the leaflet.

Q. Tell me what he said.

A. For refusing to join the C.E.A.

Q. Hawkinson told you you were fired for refusing to join the C.E.A.; isn't that true?

A. Yes.

Q. And refusing to pay dues in the C.E.A.?

A. No, he didn't say that.

Q. Before, in your direct examination, you mentioned the fact Mr. Hawkinson did say it was because you hadn't paid dues. I will say that to you seriously. That is what you testified in the first instance. Did he say anything about paying dues?

Trial Examiner Batten: Well, irrespective of

(Testimony of Vivian Mary Sullivan.)

what you said before, if you said that, you tell us what he did say to you about that matter?

The Witness: He told me when I went back to work, to see if I was fired or was still working, that all of us who signed that leaflet were going to be fired.

Q. (By Mr. Cannon): Were going to be fired?

A. Yes. There was Louis Turnie, he wasn't fired at the time. I don't know about a couple of them.

Q. What else did he tell you? [689]

A. He told us that we were to be fired, that he was sorry.

Q. Did he say why you were going to be fired?

A. For the leaflet.

Q. And for not joining the C.E.A.?

A. For the leaflet and not joining the C.E.A., but he didn't say anything about dues. [690]

* * * *

MONNA MONNETTE NYE.

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Ryan): Miss Nye, I show you Board's Exhibit 45, and ask you if the name Monna Nye appearing at the bottom of this document refers to you? A. Yes, it does. [692]

Q. Were you part of the group that put out that document? A. Yes, I was.

Q. Where was it distributed, can you tell me?

A. Well, we passed the leaflets out in front of the

(Testimony of Monna Monnette Nye.)

employees' entrance at Cannon's.

Q. At the gate? A. At the gate, yes.

Q. When you say "we did", whom do you refer to by the term "we"?

A. There was Erma, Vivian, and myself.

Q. Erma Evenstad?

A. Erma Evenstad, Vivian Sullivan, and myself.

Q. I notice the date of the document is May 26, 1943. Is that about the time when you circulated them? A. Yes.

Q. I show you Board's Exhibit 46 and ask you if you were served with that document?

A. Yes. As I went out the gate they handed it to me, Andy Bereznak.

Q. Andy Bereznak did? A. Or the guard.

Q. Either the guard or Bereznak?

A. Yes.

Q. Anyway, you received a copy of this document, did you? A. Yes. [693]

Q. And you got a copy of that shortly after you had distributed Board's Exhibit 45; is that right?

A. Yes.

Q. Then I notice in the document, Board's Exhibit 46, the date for your hearing is being set for you and these other people that signed the document which is Board's Exhibit 45. Did you appear for that hearing? A. No, we didn't.

Q. I show you Board's Exhibit 47, and ask you if you and the other persons whose names are type-written thereon put that document out?

A. Yes, we put this out.

(Testimony of Monna Monnette Nye.)

Q. The people whose names are typewritten on there at the bottom? A. Yes.

Q. Did you circulate that among the employees?

A. At the gate.

Q. The Cannon gate? A. Yes.

Q. Now, the date on that document is June 8, 1943? A. Yes.

Q. And I ask you if on June 12th you reported for work as usual? A. Yes.

Q. June 12, 1943? [694] A. Yes.

Q. Would you tell us what happened as you came to the plant that day to go to work?

A. I walked in the gate and then I went into the cafeteria. I didn't come in right away, I had some time. I met Joan Lawrence there and she told me her time card wasn't there. Erma Evenstad and I went out and our time cards were gone.

Q. Where did you and Erma Evenstad go, to the time clock? A. Yes.

Q. Joan Lawrence, is that the person whose name is also attached to these documents you have just looked at, Board's Exhibits 45, 46, and 47?

A. Yes.

Q. Go ahead.

A. And Erma Evenstad and myself, we went in to Mr. Hawkinson's office, and I asked Mr. Hawkinson—

Q. Was anybody else in there besides you and Erma Evenstad?

A. There was Bill Youngberg.

Q. Is his name also attached to those documents you just looked at? A. Yes.

(Testimony of Monna Monnette Nye.)

Q. All right.

A. And I told Mr. Hawkinson he couldn't fire me. And he said, "Well—."

Q. Wait a minute. Now, Miss Nye, when you first went in [695] there, who was there besides these people you have mentioned. Mr. Hawkinson was in there. Was anybody else in there besides these other people you have mentioned? Have you named everybody that was in the office that you can recall?

A. I don't know whether his secretary was in there or not.

Q. Now, would you tell us what was the first thing said when you got in there, and by whom?

A. The first thing I said when I got in the office is, "My time card isn't in the rack."

He said I had been fired. And I said, "You can't fire me."

He says, "Well," he says, "I have to fire you because the C.E.A. ordered it."

And then I said—I started threatening him. I said, "I will go to the Board." I threatened him with all sorts of legal actions, and that I would take—and Erma grabbed my arm and pulled me out.

Q. Just what did you say? You say you threatened him. Tell us what you said, Miss Nye?

A. I said I would take it to the Labor Board and really would show him what was what.

Q. Did Mr. Hawkinson say anything further?

A. He had a little book and he had it open. I didn't read it. I just pushed it away, and wouldn't read it.

(Testimony of Monna Monnette Nye.)

Q. Did you recognize the book? [696]

A. Well, it was a little book, you know, like they pass out.

Trial Examiner Batten: The question is: Did you recognize it? What was it?

The Witness: It was a contract, or something like that, with the company, with Cannon's.

Q. (By Mr. Ryan): Well, did he read from it?

A. He extended it and he held it out, but I wouldn't look at it. I just pushed it away. I didn't want anything to do with it.

Q. Did you then leave the office?

A. Then Erma escorted me out.

Q. Where did you and Erma go after you left the office?

A. We had to turn in our tool checks.

Q. What are tool checks?

A. You know, our tool box.

Q. Tool checks, are they numbers you have for your tools?

A. Yes. We go to the tool crib and check things out with them. And we were going over and saying goodbye to several of the fellows in the machine shop and Mr. Hawkinson and one of the guards, they seemed rather in a hurry for us to get out of the shop. They didn't want us to talk to anyone. That is the impression I gathered.

Mr. Cannon: I move to strike that.

Trial Examiner Batten: It may be stricken, the impression. [697] Tell us what was done and what was said.

Q. (By Mr. Ryan): While you were over talking

(Testimony of Monna Monnette Nye.)

to the other employees, did Mr. Hawkinson come over there?

A. Mr. Hawkinson came up and told us we better be leaving. And Mr. Hawkinson and the guard walked with us out to the gate.

Q. The exit? A. The exit from the shop.

Q. Was there anybody besides you and Erma Evenstad there when you were escorted out?

A. Bill Youngberg was still in there when I left.

Q. He stayed behind in Hawkinson's office?

A. Yes.

Q. Have you ever been employed since then by Cannon's? A. No.

Mr. Ryan: That is all.

Cross-Examination

Q. (By Mr. Cannon): What other threats did you make at the time you were let out?

A. I told them I was going to go to the Labor Board and show them what was what.

Q. You would show them what was what?

A. Yes.

Q. What else was said?

A. He said he had to fire me because the C.E.A. had ordered [698] it.

* * * *

CLARENCE WILLIAM YOUNGBERG, Jr.,
called as a witness by and on behalf of the National
Labor Relations Board, being first duly sworn, testi-
fied as follows:

Direct Examination

Q. (By Mr. Ryan): State your full name, please,
Mr. [703] Youngberg.

A. Clarence William Youngberg, Jr.

Trial Examiner Batten: Mr. Ryan, not to inter-
rupt, but is it the position of the Board that all these
people listed in paragraph 14 were discharged under
similar circumstances?

Mr. Ryan: Yes.

Mr. Cannon: I will stipulate to that.

Trial Examiner Batten: Not discharged, but
were terminated by service of this notice and so
forth.

Mr. Ryan: That is right.

Trial Examiner Batten: I was going to suggest
then, is it necessary to go into the details of that
with each one of these witnesses?

Mr. Ryan: Not at this time, no.

Trial Examiner Batten: In other words, if there
are any conversations or any matters, other than this
incident of their termination, I think it is all right
to go into it. But I am sure, with the names of all
these people on the notice of hearing and so forth, it
can be agreed they were all notified of this hearing
and that their employment was terminated. I don't
mean was terminated by the company, but termin-
ated under similar circumstances. Is that correct,
Mr. Cannon?

(Testimony of Clarence Wm. Youngberg.)

Mr. Cannon: That is correct.

* * * *

[704]

Q. Were you ever employed by Cannon Manufacturing Corporation? A. Yes.

Q. When did you begin working for that company, approximately?

A. Friday, September 13, 1940.

Q. And in what department did you begin working? A. Die cast.

Q. Did you continue in that department all of the time you were employed?

A. No, sir. I worked in various departments. First it was die cast and then finishing casting, and then maintenance.

Q. At the time you began working for the company, who was your foreman? A. Joe Kales.

Q. About March, 1941, did you have occasion to have a [705] conversation with Ned Mandella?

A. Yes. Ned Mandella was signing people up for a Cannon Employees Recreation Association at the tool crib, which he was an attendant of—he worked in the tool crib. I don't know whether you would consider him an attendant.

Q. He worked there, anyway. Now, on the occasion when you talked to him were you at the tool crib?

A. I was at the tool crib window.

Q. Tell us what the conversation was.

A. He wanted to know if I would give 50 cents a month for Cannon Employees' Recreation Association, to take care of recreation for different things. We was to get discounts on different recreation, by

(Testimony of Clarence Wm. Youngberg.)

getting in a mass, a bunch of us to go collectively. He would get different recreations, horseback riding and so on. And this was to be an association for that.

Mr. Cannon: I see you have a similar recreation card in your hand.

Mr. Ryan: Yes.

Mr. Cannon: It may go in without further identification, showing the dues he paid, and save some time.

Mr. Ryan: Maybe we can stipulate that the card shows punches for the months of February and March, and it would indicate that dues were deducted.

Mr. Cannon: Yes. February and March, 1941?

Mr. Ryan: Yes.

Mr. Cannon: Yes. We will so stipulate.

Q. (By Mr. Ryan): The card, Mr. Youngberg, indicates you paid dues in February. It must be February when you were first approached, 1941, by Mandella; is that right?

A. Well, the dates are hard to remember then.

Q. Whatever the card says it is probably more accurate than your memory now?

A. It probably is, yes.

Trial Examiner Batten: So the record is clear, I think Mr. Cannon said something about dues for those two months being deducted.

Mr. Cannon: I didn't mean deducted. I mean he paid them.

Trial Examiner Batten: Under the Recreation

(Testimony of Clarence Wm. Youngberg.)

Association the employees paid the dues themselves?

Mr. Cannon: That is right.

Trial Examiner Batten: The respondents didn't deduct the dues?

Mr. Cannon: I didn't mean to say deduct.

Trial Examiner Batten: You said deduct.

Mr. Cannon: I am sorry.

Q. (By Mr. Ryan): Now, did you have occasion to see any bulletin board erected in the plant there about the time, within a few weeks after this Association was gotten under [707] way, the formation of it?

A. A bulletin board was erected in front of Ray Cromwell's office, that is, between Ray Cromwell's office and the finishing casting department, which was then right beside Cromwell's office, for the purpose of posting Recreation Association bulletins. It stood up about two or three feet off the ground and it was about two and a half foot square, I believe.

Q. This Cromwell you spoke of was the superintendent, Superintendent Cromwell?

A. The superintendent of the factory then, yes.

Q. Then thereafter did you have occasion to see bulletins of this Association posted on there?

A. There were bulletins on it about the progress of the Association, and they were going to have an election of officers for the Association.

Q. Was an election subsequently held?

A. There was an election held. Herbert Elgin, who was my foreman then, and Ned Mandella were nominated for head of the Association. I don't remember whether it was president or what.

(Testimony of Clarence Wm. Youngberg.)

Q. Was a balloting election held?

A. There was a balloting election held. Who nominated them I don't know.

Q. Did you receive a ballot for that election?

A. I don't remember.

Q. Did you observe that a ballot box was made available for the placement of ballots?

A. Yes, there was a ballot box within the plant.

Q. Where was that ballot box located?

A. I am not exactly familiar with it. I think it was in the hallway there, but I couldn't say for sure.

Q. Now, prior to the first Labor Board election, National Labor Relations Board election, which I believe this record establishes, was on September 9th, 1941, did you observe that the company installed loud speakers at its plant?

A. There were loud speakers placed on the roof of the plant. The C.I.O. had a sound truck out there and the company placed speakers out there to play music.

Mr. Cannon: May I have an objection on the same ground as heretofore stated with respect to the use of these loud speakers at the same time the sound truck was being utilized?

Trial Examiner Batten: You may have a continuing objection to that.

Q. (By Mr. Ryan): Where were these loud speakers placed?

A. On the building, facing toward the street.

Q. On the outside of the building?

A. On top of the building. Whether they were on the outside I don't know.

(Testimony of Clarence Wm. Youngberg.)

Q. The C.I.O. sound truck would come down to the plant [709] occasionally?

A. It would come down there when the shifts came off and on.

Q. When would that be?

A. The regular shifts. It would be there in the morning and afternoon when the day shift went off and the swing shift came on. Whether it was there for the graveyard or not I don't know.

Q. What shift were you working on?

A. I was working on days.

Q. About how long was this before the first election you noticed that these loud speakers were installed?

A. They were installed just shortly before the first election. I don't know that it was before the strike or not.

Q. At such times as the C.I.O. public address system would come down to the plant to broadcast, did you ever have occasion to notice whether the volume over these loud speakers changed in any way?

A. They were exceptionally large speakers. They were larger than we had inside. They were on loud.

Q. Did you notice the volume that came over these loud speakers, that it would be affected one way or the other at the particular time the C.I.O. loud speaker was there?

A. I know we couldn't hear the speaker at all, and we had to move the truck down the street.

Q. The C.I.O. speaker? [710]

A. Yes. About a half a block down the street.

Q. Did you notice that the volume over these

(Testimony of Clarence Wm. Youngberg.)

loud speakers would lessen or increase after the C.I.O. truck left?

A. I couldn't say. I didn't hang around there too long after the C.I.O. truck would leave.

* * * *

[711]

Q. (By Mr. Ryan): What was the first thing that was said after you and Hawkinson came together there?

A. He said he didn't think I would get it. So I saw Henry Hintemeyer and I left Hawkinson and talked to Henry Hintemeyer, the assistant superintendent. He said being as I had asked for my vacation and they didn't give it to me he would do all he could to see I got my vacation check.

Q. Yes. But, Mr. Youngberg, you had been told by your foreman you were fired. Did you say anything to these other men, Hawkinson and Hintemeyer, about trying to find out why? [715]

A. Well, after I turned in my tool checks, then I went to Hawkinson's office to get my checks. And I talked to him the second time.

Q. I see.

A. And I asked him, I told him—I don't remember the exact words. I wanted to know why I was fired. And he showed me a little slip that was about—oh, five inches long and about three inches deep, I believe, that said the agreement between the company and the union. And he said he didn't have anything to do with it, the union had said for him to fire us. It was because of the agreement between the company and the union. I believe he said Section 2, Article I.

(Testimony of Clarence Wm. Youngberg.)

Q. Did he have the contract there at the time, the contract between the C.E.A. and the company?

A. I don't remember whether he did or not. He had some slips there. He had, I would say, a dozen slips. He thumbed through them until he got to my slip. But he didn't give me a copy of it. He just showed it to me and kept the copy.

Q. What did it say on that slip?

A. Something about the agreement between the company and the union. Article II, Section 1 or Article I, Section 2; but it was the agreement.

Mr. Ryan: Does the company have that slip now?

Mr. Cannon: No, we do not. This is an employment [716] termination slip (indicating). Was it a green slip?

Mr. Robert Cannon: Was it one of these (indicating)?

The Witness: I don't remember whether it was one of those or not.

Mr. Cannon: This is one of the confidential files we are required to keep under the Labor Act, as I understand it.

Mr. Ryan: May I see it? Is it your termination slip on this man?

Mr. Cannon: This is the termination form. This is our only record. We will give you a copy of it.

Mr. Ryan: May I look at it?

Mr. Cannon: Yes.

Mr. Ryan: Do you have any objection to my showing it to the witness?

Mr. Cannon: Is this the one you saw (indicating)?

(Testimony of Clarence Wm. Youngberg.)

The Witness: I can't say.

Mr. Robert Cannon: Those come in all different colors.

Mr. Ryan: They would have the same wording on them.

Q. (By Mr. Ryan): Mr. Youngberg, I show you a document—

Mr. Ryan: I wonder if you would have any objection to my having it marked for identification.

Trial Examiner Batten: I don't think you need to mark it, if you ask the witness if he has ever seen it. If he has seen it, there is no use—

Q. (By Mr. Ryan): I show you this document I have just [717] obtained from counsel for the company, and ask you if you have ever seen it or a duplicate document with the same language on it.

A. It looks like the same language. I don't think the one I saw was this big. But it did have Article II, Section 1 on it.

Q. This document has in the space which is entitled "Give detailed reasons for leaving" the following, and I quote, "Discharged as per instructions from C.E.A., according to Article II, Section 1 as per agreement."

Do you recall that language being on the slip you saw?

A. Yes, I do. I believe Hawkinson read it over to me at the time. Whether that was the exact—I was thinking the paper was smaller than that he had on his desk.

Q. I see.

(Testimony of Clarence Wm. Youngberg.)

A. That has been some time ago, two years. I couldn't tell the exact dimensions of the paper.

Q. After you finished your conversation with Hawkinson you then left the plant; did you?

A. He gave me my checks, both for part of my pay and the vacation, and I later came back and got the rest of my pay.

Q. Have you worked for the company since then?

A. No, sir.

Q. By the way, at the time you were in the office talking to Hawkinson and he showed this slip to you that you have [718] mentioned, were others in the office, too?

A. Yes, there were several others. There were several of us laid off at the same time.

Q. Who was in the office at the same time you were? A. Monna Nye and Erma Evenstead.

Q. Anyone else that you recall?

A. I don't recall anybody else.

Mr. Ryan: I have no further questions.

Cross-Examination

Q. (By Mr. Cannon): You understood, did you not, Mr. Youngberg, you were laid off for non-membership in the C.E.A.?

A. Well, they said I was laid off because of the agreement between the company and the union.

Q. I say because of your non-membership in the C.E.A., that that was the reason you, at least, thought at that time you were laid off for; is that right?

A. It was rumored, it came out in the C.E.A. bulletin they were going to lay us off because—

(Testimony of Clarence Wm. Youngberg.)

Trial Examiner Batten: You understood it was a closed shop contract with the company the C.E.A. had? You knew that; didn't you?

The Witness: Yes, sure.

Trial Examiner Batten: And it required that you maintain your membership in that organization? You understood that; did you not? [719]

The Witness: Well, I didn't want to maintain my membership in the C.E.A.

Trial Examiner Batten: My question is: You knew the contract provided that, didn't you, with the C.E.A.?

The Witness: The contract said it, yes.

Trial Examiner Batten: You refused to pay dues and maintain your membership; isn't that true?

The Witness: Yes.

Trial Examiner Batten: And as a result of your refusal—

The Witness: I did more than that. I had other people draw out of the C.E.A. and stop paying dues.

Trial Examiner Batten: As a result your employment was terminated because you were not a member? You understood that; did you not?

The Witness: Well, I didn't know why I was terminated. I was called over to the C.E.A. for a trial and I didn't consider myself a member, so I didn't think I should go over there for trial.

Trial Examiner Batten: You understood you had failed to maintain membership in that organization; didn't you?

The Witness: I failed to pay dues, I guess you

(Testimony of Clarence Wm. Youngberg.)

would say it was failure to pay dues. There was also a lot of other people that didn't pay dues.

Trial Examiner Batten: I am not talking about any other people. You understood that is the reason your employment was [720] terminated?

The Witness: I understood I was discharged because the C.E.A. said to discharge me.

Trial Examiner Batten: That is right. They notified the company you hadn't paid dues and were not a member. Therefore, under the contract the company had to terminate your employment. You understood that?

The Witness: Yes. I didn't know what their reason was. I know that they said that—

Trial Examiner Batten: As a matter of fact, you knew that at the time; didn't you? Didn't you know at the time that was the reason your employment was terminated?

The Witness: Because I didn't pay dues?

Trial Examiner Batten: Yes.

The Witness: No.

Trial Examiner Batten: You didn't?

The Witness: There was a lot of other people that didn't pay dues.

Trial Examiner Batten: I am not talking about other people. Didn't you know, as a result of this hearing you had, and as a result of the bulletin which bears your name, didn't you know that was the reason your employment was terminated?

The Witness: I didn't go to their little trial.

Trial Examiner Batten: You were served with a notice; [721] were you not?

(Testimony of Clarence Wm. Youngberg.)

The Witness: I was served with a notice to appear at the C.E.A.

Trial Examiner Batten: Your name appears on the bulletin you put out?

The Witness: Yes.

Trial Examiner Batten: It states you would not go: didn't it?

The Witness: It appears I said I wouldn't go to the trial. And I also said I wouldn't join the C.E.A.

Trial Examiner Batten: Then you understood that was the reason why your employment was terminated; didn't you?

The Witness: Well, they laid me off. There was a lot of other people—they didn't lay everybody off that didn't pay dues.

* * * *

Redirect Examination

Q. (By Mr. Ryan): You understood there is a closed shop contract; isn't that right? [722]

A. Yes.

Q. You understood that under the closed shop there was a provision you must maintain membership in the C.E.A.? A. Yes, sir.

Q. You didn't continue to be a member and you didn't continue to pay dues; isn't that right?

A. That is right.

Q. So just reading the closed shop provisions of the contract, as such, you realized what you were doing was contrary to what the provisions of this contract provided for? A. Yes, sir.

Q. Therefore, you realized that if the company and the union desired to enforce that, if both agreed

(Testimony of Clarence Wm. Youngberg.)

to enforce that provision that would leave you liable to discharge; is that right? A. Yes, sir.

Q. And when you were discharged you were told, in effect, that was why you were being discharged?

A. There was an agreement between the company and the union.

Mr. Ryan: I have no further questions.

Mr. Cannon: That was why you were being discharged? You were told that, too; weren't you?

The Witness: They told me the reason I was being discharged was the agreement between the company and the union.

* * * *

[723]

Mr. Ryan: Mr. Examiner, in view of our understanding now that it won't be necessary to call any more of this particular group as witnesses that are involved here together under this June 12th matter, I won't call any more of those witnesses.

Trial Examiner Batten: I don't see any need for it.

Mr. Ryan: No.

Trial Examiner Batten: Because I think Mr. Cannon is perfectly agreeable to this: That those people named in the notice of hearing, those people who sent out the bulletin, their employment was terminated under the same circumstances and they were terminated because, under the closed shop contract, they refused to pay dues and remain members of the C.E.A. And the C.E.A., therefore, expelled them, or whatever procedure they went through. And they notified the company they were not paying

dues, and in accordance with that the company terminated their employment. Is that correct?

Mr. Cannon: Yes. Those named in there as discharges on that date. [724]

Trial Examiner Batten: Yes; paragraph 14.

Mr. Ryan: Those employees lumped together.

Trial Examiner Batten: I see no need of having them all come up here and testify about the same thing.

* * * *

[725]

CLARENCE JOSEPH ARMANT,

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Ryan): State your name for the reporter. A. Clarence Armant.

Q. You are the same witness that testified previously in this trial by that name, is that right?

A. Yes, I am.

Mr. Ryan: Mr. Reporter, will you please mark this document as Board's Exhibit next in order, for identification.

(Thereupon, the document referred to was marked Board's Exhibit No. 48, for identification.)

Mr. Ryan: This is Board's Exhibit 48, for identification, purporting to be a transcript of a radio broadcast, "Subject: Cannon Employees' Associa-

(Testimony of Clarence Joseph Armant.)
tion charged with unfair labor practices. Date August 27, 1942. Station KPAS. Time 5:45 p.m.”

Do you wish to see it, Mr. Cannon?

Mr. Cannon: No.

Q. (By Mr. Ryan): Mr. Armant, I show you this document, [730] Board's Exhibit 48, for identification, and ask you to look at it and tell us whether or not that is a transcript of a radio broadcast in which you participated (handing document to witness)?

Mr. Cannon: You don't want him to read the whole thing, do you, necessarily?

The Witness: Well, I will look at it until I get some of it down to see if this is exactly the speech I made. From the part of it that I have read, it is the speech that I made over the radio.

Q. (By Mr. Ryan): It is part of the dialogue between you and another person, isn't that right?

A. Yes.

Q. I don't mean it is part of it, but it is the dialogue between you and another person broadcasting from Station KPAS, is that right?

A. That's right.

Q. Is that what you were referring to when you were referring to your speech in your testimony before? A. Yes, it was.

Q. The date appearing on the photo is August 27, 1942, at 5:45 p.m., and that is the date, is it, upon which you gave the talk?

A. Well, I couldn't say exactly.

Q. Well, if it says that on the folder, you won't quarrel with the date there, will you? [731]

(Testimony of Clarence Joseph Armant.)

A. No, I won't.

Q. This Tom Van Dyke was the announcer, was he, on "Our Daily Bread Program"?

A. He was.

Q. And that is a program sponsored by the C.I.O., is that right? A. Yes, it is.

Q. Mr. Armant, in this talk you refer to your termination of employment at Cannon's for the first time, is that right? A. Yes.

Q. On Page 2, Mr. Armant, I direct your attention to the third paragraph from the top of the page:

"Armant: It certainly wasn't because I don't do my work, because on the day I was fired the superintendent of Cannon Electric Company, Rollie Thompson, told me that I was a good worker, rated very highly with the firm, but that he had no alternative but to let me go because the company union was demanding it because I was not in good standing."

Mr. Armant, on the day that you were terminated that you refer to, did you have a conversation with this Rollie Thompson as referred to in this transcript?

Mr. Cannon: I submit he has already testified to that.

Trial Examiner Batten: I don't know whether he has or not. Do you recall having a conversation with him on that [732] day?

The Witness: Well, I recall having a conversation with him, yes, but I don't recall exactly what it was. If it is in the speech here, I did have that conversation with him.

(Testimony of Clarence Joseph Armant.)

Mr. Cannon: I move to strike that out as being argumentative.

Trial Examiner Batten: In other words, you don't recall now independent of this radio talk, whether you had a conversation with him or not, is that right?

The Witness: At this time, no, I don't, but at the time the radio speech was made, everything in it that was in there was exactly what happened.

* * * *

[733]

Mr. Ryan: I offer Board's Exhibit 48, for identification, in evidence as Board's Exhibit 48.

Mr. Cannon: May I see that?

Mr. Ryan: Yes (handing document to Mr. Cannon).

Mr. Cannon: I object on the ground it is hearsay.

Trial Examiner Batten: Is this the talk over the radio that you testified about that you were questioned about in the hearing that you had?

The Witness: Yes.

Trial Examiner Batten: It will be received in connection with this witness' testimony.

(Thereupon, the document heretofore marked Board's Exhibit No. 48, for identification, was received in evidence.)

* * * *

[734]

RACHEL McBURNIE,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: [735]

Direct Examination

Q. (By Mr. Ryan): Will you state your full name, please? A. Mrs. Rachel McBurnie.

Q. What is your address?

A. 6403 North Figueroa Street.

Q. That is in Los Angeles, California?

A. Los Angeles, California.

Q. Were you ever employed by Cannon Manufacturing Corporation?

A. I was, at 3209 Humboldt Street.

Q. Mrs. McBurnie, when did you begin working for that company, approximately?

A. I believe the exact date is June 6, 1942.

Q. And what was your first job?

A. Matron.

Q. Matron? A. Yes, on the swing shift.

Q. What were your duties as a matron on the swing shift?

A. Well, I had charge of a locker room. We took care of the girls, small services for them.

Q. Such as what?

A. Oh, sewed on buttons and did little—well, changed money for them if they wanted it changed. We were in the locker room at all times.

Q. Was that a room where the girls changed their clothes?

A. Yes, the girls changed their clothes there and kept their [736] things in there.

(Testimony of Rachel McBurnie.)

Q. Their personal effects?

A. Yes. They had lockers. We had charge of the locker keys, and we saw that they got lockers, and checked out of them when they were finished.

Q. Did you continue on that job always while you were in the employ of the company?

A. No, I did not. They had a change of policy at the plant and they decided that they had too many matrons, and the superintendent at that particular time helped me get a job as department clerk in Department No. 2.

Q. About how long was that after you first went to work?

A. Well, I would say that I went to work in Department 2 about October of 1942. I might be wrong on that. I don't think I was matron very long, though. I think I went in Department 2 right in the latter part of the same year.

Q. Who was your foreman while you were there?

A. Dallas Hough was the first foreman.

Q. Was he your foreman while you were in Department No. 2?

A. He was foreman until—I have my dates mixed there. I went to work in Department 2 about May, and Dallas was transferred to some other plant in October, and that is the way it was.

Q. Who was your foreman after that?

A. Frank Enna. [737]

Q. Was he your foreman all the time that you worked there?

A. Until after this trial and difficulties I had at the plant, and I asked to be transferred out of the

(Testimony of Rachel McBurnie.)

Association and was given a job in inventory control.

Q. When were you transferred out of Department 2, about? Just give us an approximate date.

A. The 23rd day of October of 1944.

Mr. Cannon: Transferred out of what?

Mr. Ryan: Department 2.

Q. (By Mr. Ryan): When you were transferred out of Department 2, what job did you have thereafter?

A. I went up to inventory control, the bookkeeping department, and took care of the records in the stock room, checked on incoming orders and orders that were going out.

Q. How long did you work in that department, Mrs. McBurnie?

A. Until approximately February of this year.

Q. Of this year? A. Yes.

Q. Then did you leave the employ of the company in February of this year?

A. I didn't leave until April. I had two weeks vacation coming and I took a leave besides.

Q. But you terminated your employment officially about April of this year?

A. April of this year. [738]

Q. Mrs. McBurnie, when you made your application for employment with the company on the first occasion, will you tell us the procedure you went through in the personnel office to get your job?

A. Well, I went into the personnel office, and I believe I was introduced to Mr. Drouet. Mr. Drouet would be my immediate superior, LaGuerre Drouet. I was introduced to Mr. Drouet, and he at that time

(Testimony of Rachel McBurnie.)

would be my immediate supervisor in charge of the maintenance department where I would work as a matron. I filled out the application blank and all that sort of thing, and I was sent over to see Mr.—well, the man in charge of the C.E.A. at that particular time.

Q. Ned Mandella?

A. Ned Mandella, yes. I was over to see him.

Q. Who sent you over to see him?

A. The personnel office sent me over to see him.

Q. Do you know who it was in the personnel office that sent you over there?

A. I didn't know his name at that particular time, no.

Q. Was it the personnel man that hired you?

A. The man that took my application and all that sort of thing.

Q. What did he say in connection with sending you over there?

A. He said that it was the policy, for everybody to go over and see Mr. Mandella at the Association, because that was a part [739] of the policy of working there at Cannon's, that you belonged to the Cannon Association.

Q. Did you then go over to the C.E.A. office?

A. Yes, and Mr. Mandella explained it.

Q. Did anyone go over with you?

A. Yes, there was another employee that went in about the same time I did. His name was Frank Martinez. We went in the same day. But to tell the truth, that is not absolutely clear. I have thought

(Testimony of Rachel McBurnie.)

since that Mr. Drouet—well, I wouldn't swear to that, either.

Q. You went to the office of the C.E.A., and did you have a conversation there with Mr. Mandella?

A. Yes, Mr. Mandella explained policies of the Association.

Q. Tell us what he said in substance, if you can?

A. Well, he told us that it was a company association. He said that everybody that worked at Cannon's belonged to it, that they didn't have any outside unions, and he said they all got along very nicely together, and that the dues would be \$1.00 a month, and that would be taken out of our pay check by the company each month, that was subtracted, and we didn't pay it out of our own pockets.

Q. Did you then sign up with the C.E.A. at that time?

A. I don't know whether any papers were ever signed on a thing like that or not. I don't remember signing a paper. I had a lot of papers that day that were given me for different [740] things, but I don't remember signing that paper. He talked to us for about 20 minutes, and that was all.

Q. After you left his office, what did you do?

A. I went over and I was on the swing shift that night, so I had to go to work at four o'clock, and I went over from the C.E.A. office to the plant.

Q. By the way, at the time Mandella talked to you, that is the conversation you have just related to us, was there anyone there with Mandella besides you and possibly this Martinez that went over with you?

(Testimony of Rachel McBurnie.)

A. No, I believe, as I remember it, Mandella was sitting at a desk by himself.

Q. After you left the office, where did you say you went?

A. I went back over to the plant. I was on the swing shift and had to report at four o'clock that night.

Q. So you reported for work? A. Yes.

Q. Thereafter, were you ever elected to the position of shop steward in the C.E.A.?

A. Not until I went into Department 2.

Q. In Department 2? A. Yes.

Q. By the way, on this first job when you were matron, to your knowledge, was the contract of the Association and the company covering matrons at that time? [741]

A. I believe we paid dues for a short time, and then they changed it and we didn't have to pay. I think they exempted guards and matrons and people like that.

Q. You became a shop steward about when?

A. Some time after May when I went to work over in Department 2, some time after that particular day.

Q. In 1943? A. 1943.

Q. How did you become a matron? What was done about that? What were the mechanics by which you became a matron? Were you elected or chosen or just how was that done?

A. I was hired for the job of matron. Did you mean shop steward?

Q. I mean shop steward.

(Testimony of Rachel McBurnie.)

A. The stewards on the shift asked me if I would be a shop steward of that particular department.

Q. The shop stewards in the other department?

A. The girls in the department.

Q. On that shift?

A. Yes. There was a vacancy and they asked me if I would be a shop steward in that particular department.

Q. In your department? A. Yes.

Q. Can you relate the circumstances—

A. Wait a minute. This is not shop steward. This is chief [742] steward.

Q. Well, let's get to the point, first; when you first got to be a shop steward?

A. I was not a shop steward.

Q. You were not?

A. It was a swing shift chief shop steward over the other shop stewards, and they elected me to be chief steward on the swing.

Q. You never were a shop steward?

A. No.

Q. But you were the chief shop steward?

A. Yes.

Q. Will you relate the circumstances of them coming to you and telling you they wanted you to be the chief shop steward?

A. I told them I did not know anything about the job.

Q. When did they come to you, approximately, to the best of your memory?

A. Really, I have no date on it. It was in the fall of 1943.

(Testimony of Rachel McBurnie.)

Q. Will you tell us where you were approached on that proposition?

A. I was department clerk in Department 2, and a girl, who was the shop steward in Department 2, by the name of Pat Ledford, Pat had asked me if I would consider being a steward, and I said I didn't know anything about it, and then another girl in the department by the name of Vera Bertram asked me [743] if I would also consider being shop steward, and they went around to the other shop stewards and got enough of them lined up so that they said they would be very well satisfied if I was the chief steward.

Q. What I am trying to get at is the particular place you were at the time?

A. I was department clerk in Department 2 at that time.

Q. At the time you had the conversation, yes, but during the day on which they came to you, were you at your machine working?

A. Yes, it was on my shift at my desk and place, but we all went out in the cafeteria. Mr. Richard Franklin and Pat Ledford, and Vera Bertram and one or two others were in the group, and at that time Mr. Franklin was friendly, and when I told him I didn't know a thing about this particular thing, he said, "Well, you don't have to know too much about it. We will all help you to hold it down." He said, "Everybody likes you and we will help you take care of it."

Q. Mrs. McBurnie, was Richard Franklin at that

(Testimony of Rachel McBurnie.)

time business agent of the Cannon Employees' Association? A. Yes.

Q. You say you walked into the cafeteria?

A. Yes.

Q. Was that during working hours?

A. Yes, during working hours. [744]

Q. When you got into the cafeteria, did you have a meeting there, you and these other people?

A. Did I?

Q. Yes.

A. We were there about a half an hour.

Q. And the people there at that meeting, outside of Mr. Franklin, who was business agent, were shop stewards?

A. Shop stewards in different departments.

Q. Of the Cannon Employees' Association for different departments in the plant? A. Yes.

Q. Was an election held there then on the question of your becoming chief shop steward?

A. Yes, they raised their hands.

Q. There was a vote by the raising of hands?

A. Yes.

Q. You were in there about a half hour?

A. Just about.

Q. And then you were designated by a majority of those present to be chief shop steward?

A. On that particular shift.

Q. And after the meeting was over, did you return to your job? A. Yes.

Q. Did you lose any pay for the time you spent in the cafeteria? [745] A. No.

Q. As chief stop steward, can you tell us approxi-

(Testimony of Rachel McBurnie.)

mately how many steward meetings were held a month?

A. That is a part of it that Mr. Franklin laughed at me afterwards about. He said I would make as bad a Board of Director member as I did a shop steward, because I didn't have any meetings during that time.

Q. About how long were you chief steward?

A. I imagine about three months.

Q. And to your knowledge, there were no meetings of shop stewards during that time?

A. Not that I know of, because at the time I was elected, I told them I didn't know the procedure, and they told me they would notify me—Mr. Franklin had said he would notify me when things were going on, and I let it go. I really was a very bad shop steward.

Mr. Cannon: What was the last of that?

(The record was read.)

Q. (By Mr. Ryan): You mean you didn't hold any office? A. No.

Q. Or hold any meetings? A. No.

Q. About May, 1944, Mrs. McBurnie, did you run for membership on the Board of Directors of the Cannon Employees' Association? [746]

A. Yes. About 30 days before that, they had asked me to run and I said no; and they got Vera Bertram again, and she was the one who started it.

Q. Who was she?

A. She was a shop steward in a department.

Q. In your department?

A. She asked me if I would run for a Board of Director member, and I said no, because I hadn't made a success of this chief steward business, and she said, "Go ahead, I have a list of about 99 names that want you to run."

I said, "Well, it doesn't make any difference about that, because I don't know enough," so I turned it down, and then they got another petition up and got the names and came and asked me if I would run after that, and I said, "All right, I will."

Q. And then there was an election and you were elected, were you? A. Yes.

Q. Where was that election held?

A. In the cafeteria at Cannon's.

Q. That would be about May, 1944, is that right?

A. Yes, that is about right, May, 1944.

Q. Now, within a few days after your election to membership on the Board of Directors, did you have a conversation with Johnny Gibson? [747]

A. I was elected pretty close to the 24th of May—it was some date in there—and I was to be sworn in the following Saturday afternoon. This was during the week when I was elected. The following Saturday afternoon I was to be sworn in at three o'clock at a meeting in the cafeteria, and Friday night, about 4:30, the only time I saw Johnny after that was—

Q. Who is that? A. Johnny.

Q. Johnny Gibson?

A. Yes; Johnny Gibson, he came at the guard desk when I was coming in—

Q. Coming in to the plant? A. Yes.

Q. To go to work?

(Testimony of Rachel McBurnie.)

A. Yes, coming in to go to work, and he said, "Rachel, Bob Cannon wants to see you up in his office." I didn't know Mr. Cannon, and after all, he was Mr. Cannon, and I said, "Of course, I will go up with you, but it is around 3:30"—we could always ring in after 3:30, any time after 3:30, whenever we came in around that time, but our time didn't start around four o'clock.

Q. Your shift began at four o'clock in the afternoon?

A. The shift began at four o'clock in the afternoon; that's right. I said, "Wait until I ring my time card and I will go [748] up with you." This was Friday night, and I was not to be sworn in until Saturday afternoon.

Q. By the way, Johnny Gibson, at that time was he president of the Cannon Employees' Association?

A. Yes.

Q. Go ahead.

A. So when we got upstairs, he introduced me to Mr. Cannon, and he was very nice to me, Mr. Cannon was.

Q. That is Mr. Robert Cannon?

A. Mr. Robert Cannon.

Q. You were up at his office at that time?

A. Up in his office upstairs.

Q. Just relate the conversation, now, between Mr. Cannon, yourself, and Mr. Gibson.

A. Well, Mr. Franklin introduced me—

Mr. Cannon: Franklin, or Gibson?

The Witness: I mean Mr. Gibson, that's right. Mr. Gibson introduced me to Mr. Cannon, to Bob

(Testimony of Rachel McBurnie.)

Cannon, and Mr. Cannon asked me how I happened to be elected on the Board of Directors, and I said, "Well, the girls wanted a woman on the Board. I knew them all, knew the employees quite well, and they had elected me by 382 votes, and I was very proud of the honor." So Mr. Gibson said, "Are you sure you weren't elected to the Board of Directors to oust Richard Franklin?" [749]

Q. (By Mr. Ryan): To oust Richard Franklin, is that what he said? A. Yes.

Q. Richard Franklin, I believe you have already stated, was the business agent?

A. Franklin was the business agent, yes. I said, "Not to my knowledge, no." I said that there were a lot of things about this Board of Directors that I did not know.

Q. Did you say that?

A. Yes, I did. I said I didn't know anything about ousting Mr. Franklin at that particular time.

Q. Will you relate the rest of the conversation, if there was any, as best you can recall it?

A. Mr. Cannon said that the Association and the company had always got along very nice and there had been a lot of good work done, there had been parties and good times, and everybody had pulled together very nicely, and Mr. Franklin had made a good business agent.

I said that I had heard the same thing, and that everything so far as I knew was very—

Mr. Cannon: What is that? Will you repeat the last part of the answer, please?

(The answer was read.)

(Testimony of Rachel McBurnie.)

The Witness: That everything so far as I knew was very all right, very nice, you know. [750]

Q. (By Mr. Ryan): Did Gibson make any further statement?

A. He asked me if I was absolutely positive that I was not elected to oust Mr. Franklin.

Q. Did he repeat that?

A. He repeated that particular conversation, and he said he had heard rumors that there was a move on to oust Mr. Franklin, but I said I had not heard anything about it.

Q. As a matter of fact, Mrs. McBurnie, had that been part of your campaign?

A. Well, to tell the truth, Mr. Ryan, there was no campaign in that particular deal, whether you believe it or whether you don't believe it.

Q. It is not a question of my belief, Mrs. McBurnie.

A. The folks that took up the petition told the crowd that I was running for Board of Directors and they signed the paper. We made no campaign and made no promises.

Q. When you say "we", you mean you and the people backing you for the office of Board of Director?

A. Yes, sir. We promised nobody anything.

Q. The next day, was there a meeting in the cafeteria at which you were present?

A. Yes, sir, at three o'clock in the afternoon.

Q. Who was present at that meeting?

A. The Board of Directors that were then in office.

(Testimony of Rachel McBurnie.)

Q. Who were they? [751]

A. Johnny Gibson, Earl Lawhorn, Lee Lawhon.

Q. Will you spell those names, please?

A. Earl Lawhorn is spelled L-a-w-h-o-r-n, and Lee Lawhon is spelled L-a-w-h-o-n.

Q. In other words, the last names are similar, but they are not identical?

A. That's it, they are not identical.

Q. Lawhon is Lee? A. Yes.

Q. And Lawhorn is Earl? A. Yes.

Q. Who else was there?

A. Johnny Reed and Al Tuttle, and a fellow by the name of Hepple, Jack Hepple.

Q. Johnny Gibson?

A. Yes, and Richard Franklin, and, of course, I was introduced as the new Board of Director member and was sworn in. They accepted me as a member.

Q. What was the first order of business, as you recall it?

A. They had a—oh, there was some talk about baseball suits, and Cal Cannon was in charge of the recreation fund, and he was to put in part and the Board of Directors were to put in part of the money out of the C.E.A. fund, and they agreed on that, to get baseball suits for the girls or for the football team. [752]

Q. Was there any other business taken up?

A. Yes.

Q. What was it?

A. Then Johnny Gibson was president and he

(Testimony of Rachel McBurnie.)

stood up and said that there had been talk about ousting Richard Franklin from the Board of Directors' business agent job, and he wanted to know how we stood on it.

Q. That is, you and the rest of the Board of Directors?
A. Yes, and we voted.

Q. Did you have a vote on the question?

Mr. Cannon: I did not hear that question.

(The question was read.)

Q. (By Mr. Ryan): Go ahead and explain and I will follow your statement.

A. Johnny Reed suggested they have a silent vote. Earl Lawhorn said, "No, let it come right out in the open, let everybody vote openly on what they want to do."

Q. In regard to what matter?

A. Whether or not there was to be an ouster, whether or not we would oust Richard Franklin as business agent.

Q. Was there a method of voting finally determined upon?

A. Yes, sir, everybody voted openly and raised their hands. The vote came to four to oust Richard Franklin, and three to—one was a silent vote, because Jack Hepple didn't vote openly.

Mr. Cannon: Let's see if I have that correct. There were [753] four votes to oust Franklin?

The Witness: Four of us raised our hands to oust Richard Franklin, and three were taken to be not for that, because Jack Hepple didn't vote.

(Testimony of Rachel McBurnie.)

Q. (By Mr. Ryan): What four of you voted to oust him, can you name those?

A. Earl and Lee and Johnny Reed and myself.

Q. Then the vote was taken just among the directors?

A. The vote was just among the directors, yes.

Q. What happened immediately after the vote was taken, if anything?

A. The place grew into an uproar. Mr. Franklin stood up and got very red-faced and got mad and he said if he was going to get out of the C.E.A., he was going to walk out and he was not going to be thrown out.

Mr. Cannon: I am sorry. I didn't hear that answer. Will you read it, please?

(The answer was read.)

Q. (By Mr. Ryan): He said that if he was going to get out of the C.E.A., he would walk out?

A. Yes. He left the meeting during this particular mix-up, and the die cast was coming in——

Q. He left the room, did he, after this vote was taken and after he made the statement?

A. He left the meeting out in the cafeteria at the change of [754] the shift, because the other people were coming in to go on shift, and we were in the back, so he left our particular meeting and came back with the crowd.

Q. Crowd of whom?

A. The majority of them were die casters.

Q. They were the die cast employees?

(Testimony of Rachel McBurnie.)

A. Yes, of the Cannon Association.

Q. You mean of the die casting department?

A. Yes, and the die casters proceeded to ask us our reasons for the decision, and they asked us what was the matter with us, and one man in particular, Vern Jacobs asked us about it and he shook his hand under my nose and invited me out in the alley.

Q. Was there any action taken by the Board of Directors during that meeting?

A. At this particular time we—well, Earl Lawhorn at that particular time said to recall Johnny Gibson, too, as president.

Q. He wanted him to be recalled from the office of president?

A. Office of president.

Q. He made that motion, did he?

A. And Johnny Reed said—Oh, no, there was no chance to make a motion.

Q. There were a lot of people milling around, were there?

A. Yes, they were all around there, and there was no way of [755] doing anything, but Johnny Reed said, "Let's put it up to a vote of the Association." He said, "If the Association is back of this particular vote, why, they will vote with us." He said let it be an open vote.

Q. And was there an agreement then that an election would be held among the members of the association?

A. I believe there was. I had to go in and go to work. I was on the swing shift. That was Saturday afternoon at three o'clock. Sunday, of course, it was

(Testimony of Rachel McBurnie.)

impossible to get anything done. Monday we met and put out one flyleaf stating our side of the case.

Q. Who met, Mrs. McBurnie? When you say "we," whom do you mean?

A. Well, Johnny Reed and Lee Lawhon and myself.

Q. And where did you meet?

A. We met at Florence Maynard's house.

Q. And you put out a bulletin about the matter of ousting Franklin?

A. We just put out our side of the case and why we did what we did. [756]

* * * *

Q. Did this bulletin have to do with the question of this coming election and on the question of ousting Richard Franklin and Johnny Gibson from their positions with the C.E.A., Mrs. McBurnie?

A. Yes.

Q. What did it say in substance, if you remember?

A. I believe at that particular time we just put out the reason why we voted the way we did. It was not anything to do with the coming election.

Mr. Cannon: May it be understood that if we find such bulletin, we can offer it, if either of us want to, without having to call this lady back?

Mr. Ryan: Yes.

Trial Examiner Batten: In other words, you stated your reason for voting to oust Franklin, is that it?

The Witness: Yes, we did, more or less, and as

(Testimony of Rachel McBurnie.)

far as [757] we were concerned, it didn't have anything to do with saying anything about him personally because, after all, that was none of my business.

Trial Examiner Batten: I don't mean it was personal, but you gave your reasons why you thought a change was necessary, is that it?

The Witness: Yes.

Q. (By Mr. Ryan): Mrs. McBurnie, then was an election held within a few days after that?

A. Yes. You see, it was just about a year ago today—you see, Monday, there was a memorial day come along, and the following morning they had the election in the plant. There was no way of getting any votes, and we didn't see the tickets. I did not see the voting tickets.

Q. You mean the ballots?

A. I did not see them at all before they were put out that morning.

Q. Do you know by whom they were prepared?

A. No, and the voting issue, as we understood it all along among ourselves, was to ask for a vote of confidence as to whether we had done right in—

Q. In your voting?

A. In our voting against Richard Franklin, or whether we did wrong. That was the understanding, to have the ballot made up on that idea, but the ballot didn't come out that [758] way.

Mr. Cannon: May I ask a question for the purpose of clarification? These ballots you speak about, it was the understanding between yourself and—

(Testimony of Rachel McBurnie.)

The Witness: Lee and Earl.

Mr. Cannon: ———and Lee and Earl at this meeting at Maynard's house——

The Witness: And Johnny Reed.

Mr. Cannon: Yes, and Johnny Reed, that the ballots you would put out would be on this question as to whether or not you were correct in the action you had taken on Franklin, or whether you were incorrect, is that correct?

The Witness: Yes, because I believe we voted right, and voted legally. I did not think another election would be necessary to vote on the question at all. Our thought then was to ask the association whether they thought we did right or whether we did wrong.

Mr. Cannon: All right, I just wanted to get that clear in my mind.

Trial Examiner Batten: Did you take up with the Board of Directors how the ballot was to be made out?

The Witness: Yes, we did. We agreed on that, but we didn't see the ballot.

Trial Examiner Batten: When did you agree with the Board of Directors on what should be done about it, and what [759] the ballot should say?

The Witness: That Monday before Memorial Day, because the election was to be on Wednesday.

Trial Examiner Batten: You mean on Monday there was a meeting of the Board of Directors?

The Witness: No, Lee and Johnny Reed and myself met.

Trial Examiner Batten: At this lady's house?

(Testimony of Rachel McBurnie.)

The Witness: At Florence Maynard's house.

Trial Examiner Batten: My question to you is, did you then later take the matter up with the full Board of Directors?

The Witness: No, we didn't.

Trial Examiner Batten: As to what should be on the ballot?

The Witness: No, we didn't.

Trial Examiner Batten: Did you notify the officers of the association?

The Witness: The association was never run legally.

Trial Examiner Batten: I didn't ask you that. I asked you whether you took it up with the officers?

The Witness: No. It was our understanding in that particular meeting that we would ask for a vote of confidence of the association, and the ballots would be made up that way.

Trial Examiner Batten: Did you tell anyone that is what you wanted after you met? [760]

The Witness: No, sir, we didn't, but the ballots were made up just the same, regardless.

Trial Examiner Batten: But my point is, how did you expect them to make the ballot up the way you wanted it, if you didn't notify anybody?

The Witness: At that particular time I had nothing to do with it. I was a brand-new member.

Trial Examiner Batten: I understand that, but my point is if you didn't notify the officers how you wanted the ballots made, they couldn't very well be made that way, could they?

(Testimony of Rachel McBurnie.)

The Witness: I agree with you. It couldn't be done that way, but the ballots were made up.

They said are we to retain Mrs. McBurnie, and the rest of us, or Richard Franklin and Johnny Gibson, and we didn't agree to that, either.

Q. (By Mr. Ryan): Mrs. McBurnie, so we will be clear about this, the officers and the Board of Directors constitute, besides the four you mentioned, yourself, Lee Lawhon, Earl Lawhorn, and Johnny Reed, it also constituted Richard Franklin, and this Jack——

A. Richard Franklin was not a member. Gibson and Tuttle and Hepple were the others.

Q. So that you four were a majority of the Board of Directors? [761] A. Yes.

Q. When you say, "We agree among ourselves," did you have reference to the four of you agreeing, the ones that had voted originally?

A. Yes.

Mr. Cannon: Of course, you wouldn't contend, I feel sure, that an informal meeting of that kind would constitute a meeting of the Board of Directors of any corporation, would you?

The Witness: I believe when Johnny Gibson stood up and asked for a vote of confidence at the regular Board of Directors' meeting, it was practically the only time that we asked to get a ruling on it, because at that particular time Johnny Gibson agreed we would have a vote of confidence, and the thing was just carried on then out of our hands.

Q. (By Mr. Ryan): When you say "out of

(Testimony of Rachel McBurnie.)

our hands," Mrs. McBurnie, will you explain what you mean by that?

A. I mean I had nothing more to do with any agreeing to anything else after that.

Trial Examiner Batten: You mean you weren't consulted by the others at all thereafter?

The Witness: No, sir.

Q. (By Mr. Ryan): To your knowledge, was Johnny Reed or Lee Lawhon or——

Mr. Cannon: She wouldn't know, obviously.

The Witness: I wouldn't know.

Trial Examiner Batten: He said to her knowledge, does she know.

The Witness: I really don't know.

Q. (By Mr. Ryan): Was an election held a day or so later?

A. It was held the day after Memorial Day. That was Wednesday morning.

Q. That would be 1944? A. 1944.

Q. Where was that election held?

A. In the cafeteria at the plant.

Q. And approximately how long did the voting take place?

A. I believe they closed the polls at 8:30 that night.

Q. And they began approximately when?

A. 7:30 in the morning, or around 7:00 o'clock or so.

Q. Who were the ones that took care of the ballot box during the voting and who handled the ballots, if anyone?

(Testimony of Rachel McBurnie.)

A. There was one man there in a business suit that I understood was from the election board, not knowing him at the time, but I found out later he was one of the Cannon guards by the name of Sullivan. He had a business suit on. Then a lame man that was on crutches there by the name of Harry—I never did know his last name—he sat there all day.

- Trial Examiner Batten: What did he do in the plant?

The Witness: He works on some machine in one of the [763] departments. He is crippled, though. He has a crutch, or crutches.

Q. (By Mr. Ryan): As a member of the Board of Directors, were you consulted as to who would act during that election?

A. No, sir, I didn't even see the ballot until I went in there, and that is the first I saw that the ballots were made up the way they were.

Q. When you went in to vote? A. Yes.

Q. Do you know where the votes were counted after the balloting, after the hours for voting were closed? A. Yes, I was there.

Q. You were present at the counting?

A. Yes.

Q. Where were the ballots counted?

A. In the cafeteria. I think we got through around ten or a few minutes after ten at night. My foreman allowed me to go out and be present at the counting.

Mr. Cannon: I couldn't hear that answer?

The Witness: I said my foreman allowed me to go out and be present at the counting.

(Testimony of Rachel McBurnie.)

Q. (By Mr. Ryan): In other words, you left your shift for a while to go out and be present?

A. Yes.

Q. How long did the counting take? [764]

A. They closed the ballots about 8:30. I remember that distinctly, because four people dashed madly out at 8:30 and said they hadn't a chance to vote all day and they tried to put four ballots in the ballot box, but Mr. Sullivan stuck them under the ballot box until after the voting.

Q. You saw that, did you?

A. Yes. He did that until they could check with the books to see if these four had voted or not.

Q. Then, Mrs. McBurnie, how long did the vote counting take?

A. We were there talking for a few minutes after ten. It was not very long. We were through in just a few minutes after ten.

Q. An hour and a half?

A. About an hour and a half.

Q. Who counted besides you, or who was present at the counting besides you?

A. Florence Maynard was one and this lame fellow and a fellow by the name of Delmar Love, who was chief steward on the swing shift in my place.

Q. After you had held the place?

A. Yes. He was one of the men there, and then there were some women tallying, that tallied votes. As they pulled the ballot out, they read them out loud and these two people tallied them with marks.

(Testimony of Rachel McBurnie.)

They put down five and then crossed [765] them out as they went along.

Q. Was Johnny Gibson present?

A. I believe he was in there again, but I wouldn't swear to it.

Q. Was Franklin present, Richard Franklin?

A. The same thing applied to Mr. Franklin. We were interested in the counting of the ballots, and we were watching the tallyers.

Q. Then after the counting was over, do you know where the ballots were taken?

A. Yes. Mr. Sullivan and Cal Cannon took them into Cal Cannon's office in the cafeteria. They took the box up and took it in there.

Q. Did anyone accompany them in there?

A. At the time Cal and the guard took them over, I think they went alone. I don't know who went in afterwards.

Mr. Cannon: What was that?

The Witness: At the time Cal took them in the cafeteria office, I think he and the guard were there by themselves. I don't know that anybody else went in.

Q. (By Mr. Ryan): What was Cal Cannon doing there at the time? You say he went in with the ballots to his office. Where was he? Was he present during this counting?

A. He was there when they took the ballots into the office. Yes, he was there. [766]

Q. And was a bulletin issued announcing the result of the election?

(Testimony of Rachel McBurnie.)

A. When we went out—when the swing shift was over and we went out the gate, some flyleaves were—you know, these yellow sheets or white sheets, were out there and they gave the result of the voting.

Q. Who was issuing them?

A. Johnny Gibson and Franklin and a couple of other people were handing them out right at the gate. As we went out the gate, they gave us one.

Q. Were you docked, Mrs. McBurnie, for the time you spent there counting the ballots?

A. No, sir, I never was.

Q. Docked in wages, I mean? A. No.

Trial Examiner Batten: What was the result of the election?

The Witness: Why, the tally came out 380 for us, that is to retain Gibson, and Lawhorn, and Lawhon, and Reed—I beg your pardon, not Gibson, but McBurnie and the others, the four of us.

Q. (By Mr. Ryan): That was Lee Lawhon——

A. And 380——

Q. Just a minute, Mrs. McBurnie. I want to get these four names now. Yourself, Johnny Reed, Lee Lawhon and Earl Lawhorn? [767]

A. Yes, we had 380 votes, and I believe that Franklin and Gibson had 381 at that particular time, but the four that Mr. Sullivan pulled out of the box made it 384 or 385 votes they got, which gave them a majority, but when the bulletin came out it gave it entirely different. It said it was 390, or something like that, for them, and 380 for us.

Q. Mrs. McBurnie, the bulletins that were be-

(Testimony of Rachel McBurnie.)

ing handed out at the end of the shift that night by Gibson and Mr. Franklin, as you have indicated, announced the result as 394, is that what you said?

A. 394 for them and 380 for us. I know it made a difference of ten votes, because it should have been 384 for them and 380 for us, counting the four ballots that Mr. Sullivan took out from under the box.

Mr. Cannon: May I have that answer read?

(The answer was read.)

Q. (By Mr. Ryan): About two weeks after that, Mrs. McBurnie, after that election, did you receive a notice from the C.E.A.?

A. Yes, I did.

Mr. Ryan: Mr. Reporter, will you mark this document as Board's exhibit next in order, for identification, please?

(Thereupon, the document referred to was marked Board's Exhibit No. 49, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 49, for identification, a document entitled, "Notice to Herbert [768] Caffarel, Florence Maynard, Lee Lawhon, Rachel McBurnie, and Harold Benson, members of Cannon Employees' Association, and to David Sokol, Esq., and Charles E. Taylor, Esq., their attorneys. You and each of you will please take notice"— [769]

* * * *

Q. Mrs. McBurnie, pursuant to this document,

(Testimony of Rachel McBurnie.)

which is Board's Exhibit 49, for identification, was a hearing held thereafter about July 15, 1944?

A. Some time at that time, why, yes, I received this notice and a subpoena to appear as a defendant and to protect myself at the Friday Morning Club on charges signed at this particular time by Mr. Hall. I was to go on trial to find whether I was guilty or not guilty of the acts against the association.

Q. Did you attend a hearing?

A. I certainly did. [770]

Q. Do you recall that as the hearing progressed charges were dropped against all of the defendants named therein except yourself, Herbert Caffarel, and Florence Maynard?

A. At that particular hearing, it lasted for two successive Saturdays, I was found not guilty and Florence Maynard and Herbert Caffarel were found guilty.

Q. They were the only two found guilty?

A. Yes, and the rest of the charges were dropped against the people that were served with these subpoenas, and one of the jurors was a man that had stuck my name up all over the plant.

Q. After that hearing——

Trial Examiner Batten: Just a moment. What is this Friday Morning Club?

The Witness: That is a meeting place.

Trial Examiner Batten: Oh, that is where the meeting was held, is it?

The Witness: Yes, the place of the meeting.

(Testimony of Rachel McBurnie.)

Q. (By Mr. Ryan): You say you were present at this hearing? A. Yes, sir, I was.

Q. And you were present for the C.E.A. in an official capacity as one of the jurors?

A. The Board of Directors in these trials sat as the trial board.

Q. Who were they at that time? [771]

A. Johnny Gibson was one of the defendants and yet I don't know whether his vote counted or not against him.

Q. He is not listed in there as a defendant, Mrs. McBurnie.

A. Well, we had him on trial. He was one of the witnesses.

Q. Just a minute. The document specifies the defendants and Gibson is not one of them.

A. The jury found us—the Board of Directors found us guilty or not guilty and Johnny Gibson is on the Board of Directors, and he went out with the jurors, and yet he was one of the men that were——

Q. He was one of the complainants against you, wasn't he? A. Yes.

Trial Examiner Batten: The question was, Mrs. McBurnie, who acted there as the jury?

The Witness: The Board of Directors at that particular time. Harry Grady was one.

Q. (By Mr. Ryan): Who was that?

A. Harry Grady, he was foreman.

Q. Foreman of the jury?

A. Foreman of the jury, and a fellow by the name of Lou Finley and Don Schloeder.

(Testimony of Rachel McBurnie.)

Q. Maynard O'Brien?

A. Maynard O'Brien is the name I was trying to think of. He is an electrician there. There was one more. I don't remember his name. [772]

Trial Examiner Batten: Were they the Board of Directors at that time?

The Witness: Yes, sir, they were the newly-elected ones. There had been an election since.

Q. (By Mr. Ryan): There had been an election, had there, between the election on the question of ousting Franklin or you from the C.F.A.?

A. Yes.

Q. And that was between the time of that and the time of this hearing? A. Yes.

Q. And how long after this election in the cafeteria about which you have testified, at which the question was whether they should oust you or oust Franklin and Gibson——

A. That happened about the last——

Q. Just a minute. A. Pardon me.

Q. How long after that was it, approximately, that they had an election to elect new Board of Director members?

A. Well, it was not very long after that, because they took it for granted——

Trial Examiner Batten: Just a minute.

The Witness: It was taken for granted that Earl and Lee and Johnny Reed and myself were out.

Mr. Cannon: I move to strike that. [773]

Trial Examiner Batten: It may be stricken. The

(Testimony of Rachel McBurnie.)

question is how long after was this new election for the Board of Directors, roughly? Was it a week?

The Witness: Within a week.

Trial Examiner Batten: Within a week?

The Witness: It was a very short time, because as I said, it was taken for granted that this other election ousting those—

Mr. Cannon: I move to strike that. Pardon me, Mrs. McBurnie. I move to strike that “taken for granted”.

The Witness: Yes, it was.

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Ryan): After this election, Mrs. McBurnie, on the question of ousting you or Franklin, the election you have just described, about a week or so after that a new election for the Board of Directors was held to fill your place and the places of these other people mentioned? A. Yes.

Q. Earl Lawhorn, Lee Lawhon, and Johnny Reed. A. They replaced four of us.

Q. And you? A. Yes.

Q. Where was that election held to elect these new members?

A. In the cafeteria. All elections were held in the cafeteria at the Cannon plant. [774].

Q. In this election, the first election when the vote was 384, or whatever it was, to 380, do you remember how the ballot read?

A. Yes, sir. It said, “Will we retain Johnny Gibson or Richard Franklin or Rachel McBurnie, Earl Lawhorn, Lee Lawhon, and Johnny Reed?” That is the way the ballot read, that is the way the

(Testimony of Rachel McBurnie.)

ballots came out on Wednesday, and that is the way the people voted on it, and when it was all over, it was taken for granted by the Association and everybody. We didn't have a regular recall or anything. When the vote came out 380 for us and 384 for them, they took it for granted that we were out of the Association, off of the Board of Directors.

Trial Examiner Batten: Did that mean the only ones left were Gibson and Franklin?

The Witness: And Al Tuttle and John Hepple.

Trial Examiner Batten: Whose name besides Gibson's was mentioned in the ballot, any names?

The Witness: I don't think so, no, sir. Johnny Gibson or Richard Franklin, to retain Johnny or Richard or us four.

Trial Examiner Batten: You say, then, it was just taken for granted that what that ballot meant was that you were thrown out of office?

The Witness: Yes.

Trial Examiner Batten: And Gibson was retained?

The Witness: Yes. [775]

Trial Examiner Batten: And they went ahead and elected—

The Witness: Four more Board of Director members to replace us.

Trial Examiner Batten: And that is the Board of Directors which sat as a jury?

The Witness: Yes, sir.

Trial Examiner Batten: When you had your hearing?

The Witness: Yes, sir.

(Testimony of Rachel McBurnie.)

Q. (By Mr. Ryan): Now, the trial was held on a Saturday, is that right, the first?

A. Saturday at noontime. It started at 11:00 o'clock, I think.

Q. And after starting at 11:00, it ran how long?

A. I believe we were out of there before three in the afternoon.

Q. It ran on two successive Saturdays, is that right?

A. Yes, sir.

Q. And the first trial date was July 15, 1944?

A. I believe it was.

Q. During those trial days, this group of directors of the C.E.A. that were sitting as a jury, were any of those people normally employed on the day shift at that time, do you know?

Mr. Cannon: Of your own knowledge.

The Witness: I don't know. I really don't.

Trial Examiner Batten: Let's just have the witness [776] testify.

The Witness: That is true.

Mr. Cannon: Well, was I out of order on that?

Trial Examiner Batten: If I understood you, I think you were. I may have misunderstood what you said.

Mr. Cannon: I said of her own knowledge.

Trial Examiner Batten: Then I was mistaken. That is all right.

Q. (By Mr. Ryan): Wasn't Johnny Gibson on the day shift at that time?

A. Yes, sir, he was, but Johnny used to replace other people that were off on vacation. In other

words, he has switched over and worked the swing shift, and I would not swear to it that he was working—that he was taking company time.

Q. After that trial, Mrs. McBurnie, or the hearing ended, did you thereafter receive a communication from anyone, verbally or otherwise?

A. Yes, sir.

Q. About the verdict of the trial?

A. Not as to the verdict, no. We were found guilty and not guilty right there at the trial.

Q. You were told that at the hearing?

A. Yes. The Board of Directors acted as a jury and said that they found us guilty or not guilty at that particular [777] time, and that is the only notice that we had. [778]

* * * *

HERBERT L. CAFFAREL,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * *

Q. Were you ever employed by Cannon Manufacturing Corporation and Cannon Electric Development Company? A. Yes, I was.

Q. Approximately when did you begin to work for that company? A. It was in June, 1940.

Q. What was your job first?

A. My job first was on drill press a couple of weeks.

Q. A couple of weeks? A. Yes.

(Testimony of Herbert L. Caffarel.)

Q. Then you were transferred to another job?

A. I was transferred to milling machine.

Q. In the same department? [946]

A. In the same department.

Trial Examiner Batten: Is that Department 11?

The Witness: Well, it was at the old plant and I don't know whether they had segregated all the departments. Incidentally, we stayed over there about two months and we moved to Plant 2, and it was called Department 2; and it is called that now.

Q. (By Mr. Ryan): It is still called Department 2? A. That is right.

Q. When did your employment terminate with the company, if it did? A. July 29, 1944.

Q. Mr. Caffarel, did you remain in Department 2 all the time that you worked there?

A. All the time I worked there.

Q. At the time you began working, who was your foreman? A. Dallas Hough.

Q. How long did he continue to be your foreman, approximately?

A. Well, he continued to be my foreman until the time I was transferred on days. See, this was swing shift I started on. I started to work on the swing shift and then I was transferred on days under Leonard Brooks.

Trial Examiner Batten: For how long?

The Witness: I think it was around five months after I [947] was first employed.

(Testimony of Herbert L. Caffarel.)

Trial Examiner Batten: Who was your foreman during the day?

The Witness: Leonard Brooks.

Q. (By Mr. Ryan): Did he continue to be your foreman all the rest of the time that you worked for the company?

A. No, there were several changes made afterwards. Ed Bennet became my foreman, and then later on there was another change in the foremanship and Dallas Hough came on days again. And then the final analysis of it was that Bob Weber became my last foreman.

Trial Examiner Batten: Bob Weber?

The Witness: That is right.

Q. (By Mr. Ryan): Now, Mr. Caffarel, in the early part of 1941 did it come to your attention that the C.I.O. was beginning an organizational drive among the employees of the company?

A. In 1941?

Q. Early part of 1941. A. Yes.

Q. Did it thereafter come to your attention an association was being formed; also was coming into existence?

A. Well, the first that I knew about the association was through Ned Mandella. See, Ned was working at the tool crib and I was working on a milling machine at the time. [948]

I was contacted—I don't remember by whom—to assist in organizing the C.E.A. And I also was contacted by the C.I.O. to assist in organizing the C.I.O.

(Testimony of Herbert L. Caffarel.)

I became very friendly with Ned. Incidentally, at the time I came into the picture was when Ned was in the tool crib with a sheet taking names down, and he approached me at that time to join the C.E.A. It wasn't the C.E.A. at the time. It was the Cannon Employees Recreation Association.

Q. That is what it was called first?

A. Yes, that is what it was called then.

Q. Did you have a conversation with him during those early stages of the organizational drive, about your assisting him?

A. Yes. He solicited my assistance, definitely.

Q. Did it take place at the tool crib?

A. Well, I don't know whether it took place at the tool crib or not. About the only thing I can remember at the tool crib is he wanted me to join, he wanted me to sign up.

Mr. Cannon: May I ask a question here, for clarification?

Mr. Ryan: Yes.

Mr. Cannon: So we will have the time in mind when you first came in contact with Mandella, with respect to Cannon Employees Recreation Association, was that before or after the C.I.O. began its campaign in early 1941? [949]

The Witness: That was afterwards.

Mr. Cannon: First it was the C.I.O. and then the C.E.A.?

The Witness: Well, Ned was quite busy around there. He was quite interested in athletics at the time.

(Testimony of Herbert L. Caffarel.)

Mr. Cannon: All right.

Q. (By Mr. Ryan): Well, would you place this conversation around the latter part of February? Do you think that would be about the time of it?

A. Well, we became friendly immediately after that. After he was signing up the cards at the tool crib window. Ned was running a sort of a shop laundry there. He used to take the boys' laundries and have them laundered and bring them in. And he used to distribute the mat at the window.

He said, "I think you would be a good organizer, you have a nice personality."

I said, "All right, I will do what I can for you." So then we hitched on from then on.

Q. Was anyone present when Mandella talked to you like that? A. No.

Q. Or had that conversation with you?

A. No, it was only Mandella and I.

Q. This was about the time he had the sheets there and was signing up names for the Association? A. Yes, it was during that time.

Q. Did you hear Al George testify about that matter? [950] A. In this court room?

Q. Yes. A. Yes, I did.

Q. He fixed the time some time in February, I believe, 1941. Is that about your recollection of about the time?

A. It was the early part of the year, yes.

Q. Thereafter did you take an active part in the organization of the Association?

A. Oh, yes, I did.

(Testimony of Herbert L. Caffarel.)

Q. After you talked to Mandella and he had solicited your assistance, did you thereafter have further conversations with him about organizing the Association?

A. Oh, yes. In fact, we would see each other almost every day.

Q. Every day? A. Yes, that is right.

Q. Can you place the subject matter of the conversations at any particular time after the first conversation? Can you tell us how many days later you had the next conversation?

A. You mean the time that he was at the tool crib?

Q. Yes.

A. No, I can't remember. I can't remember the amount of time. It wasn't very long afterwards.

Q. Will you tell us what you did in connection with the formation of the Association? Just what did you become for [951] the Association?

A. Well, Ned had a badge printed—made for me, one of these big badges. He said, "That will give you color."

He said, "You take care of the girls. You have a personality." He said, "I will take care of the men and the rest of the boys will take care of the men, and all you have to do is take care of the girls." I said, "That is fine."

Q. Now, about how long was it after he first contacted you and solicited your assistance that he had this badge prepared and turned it over to you?

(Testimony of Herbert L. Caffarel.)

A. Well, he made the promise that I was to become a board member, and——

Q. When did he make that promise?

A. In the early part of the campaign against the C.I.O., after he was transferred to Department 3, the assembly department.

Q. When was that, approximately?

A. Well, it was a short time after the inception of the Association. That is not the C.E.A., but the former one, Cannon Employees Recreation Association.

Q. Was that a different organization than the C.E.A.?

A. Yes, it is the same one. The recreation formed into the C.E.A. later on.

Q. In the beginning it was called Cannon Recreation Association? [952]

A. That is right.

Trial Examiner Batten: What was on this badge?

The Witness: "Member of the Board of Directors," and my name, first, in big letters.

Q. (By Mr. Ryan): Did you wear the badge on your——

A. Lapel.

Q. ——clothes? A. Yes.

Q. About the plant there? A. Yes.

Q. Did you solicit anyone for membership in the Association?

A. Well, I was talking anti-C.I.O. most of the time.

Mr. Cannon: I move to strike that. Go ahead.

Trial Examiner Batten: It is not responsive.

(Testimony of Herbert L. Caffarel.)

The question is: did you solicit members for the Association?

The Witness: Yes, I did.

Q. (By Mr. Ryan): What departments were you active in in that regard, in soliciting?

A. In Department 2 more than any other department, at that time.

Q. That was your own department?

A. Yes, that is right.

Q. Did you go around to each of the employees and contact them when you were talking about the C.E.A.?

Mr. Cannon: I thought it was the—— [953]

Mr. Ryan: Recreation Association.

The Witness: Yes, that is right.

Q. (By Mr. Ryan): Can you think of any of the ones you talked to?

A. Well, I talked quite a lot to one by the name of Cliff St. Clair. He was a fellow employee on the milling machine. And Bill Covey, also. He is also a milling machine operator. And some of the girls on the burr bench. I have forgotten their names.

Q. Was this during the first weeks of your active participation in the Association?

A. Not necessarily the first week. I gradually worked into it because I didn't know all the employees, you know; I had to make acquaintances.

* * * *

Trial Examiner Batten: What was your general discussion [954] with these employees? I think you named about three employees.

(Testimony of Herbert L. Caffarel.)

The Witness: I told them the advantages of the recreation club in opposition to the C.I.O., that the dues were only 50 cents and that we weren't obliged to go to any meetings or anything like that. And that we retained some of our so-called independency, and that it could be one big happy family there and we didn't need no outside help.

Q. (By Mr. Ryan): Did you say anything else to them?

A. Well, I said quite a lot, but I can't remember just what it was.

Q. Did you bring the company into the conversation in any way?

A. Well, I brought the company in at the time that some of the letters that were being written by Mr. Cannon were given out to the public, and more so the correspondence with Harry Bridges.

Q. About the time of the correspondence with Harry Bridges?

A. Yes. He wrote letters to Harry Bridges and Harry Bridges would answer, making quite an interesting conversation between the employees in the plant.

Trial Examiner Batten: You mean by that you discussed that matter with these employees——

The Witness: Oh, yes.

Trial Examiner Batten: ——you were soliciting? You discussed that matter with them? [955]

The Witness: About the Bridges affair?

Trial Examiner Batten: Yes.

(Testimony of Herbert L. Caffarel.)

The Witness: Yes, it was generally discussed throughout the plant.

Trial Examiner Batten: Aside from the general discussion, did you discuss it?

The Witness: Yes, I did.

Q. (By Mr. Ryan): Mr. Caffarel, will you tell us what you did in your efforts, other than this solicitation that you have talked about now? That is, when you talked to these employees that you have named; about the Association? What would you do besides talk to them, if anything?

Mr. Cannon: Ask him if he signed them up?

Q. (By Mr. Ryan): Did you sign them up?

A. Yes, that was part of my job. I didn't sign many of them.

Q. We want the details.

Trial Examiner Batten: He says he didn't sign many. Can you tell us about how many you did have sign cards?

The Witness: I should imagine five or six.

Trial Examiner Batten: Five or six?

The Witness: Yes, that is right.

Q. (By Mr. Ryan): Now, at the particular time that you talked to these persons you have named, did you talk to them during your working hours? [956]

A. Yes, I did.

Q. Right on the job? A. That is right.

Q. Did you have occasion to know whether or not the foreman was aware of your doing that?

Mr. Cannon: Just a minute. I object to that as

(Testimony of Herbert L. Caffarel.)

calling for his conclusion. I don't mind what he saw, what the foreman saw or said.

Trial Examiner Batten: I think what he should tell is whether the foreman was present.

Q. (By Mr. Ryan): Was the foreman present in the department at the time?

A. Yes. In fact, the foreman knew—they were aware of what was going on.

Mr. Cannon: I move to strike it out.

Trial Examiner Batten: That may be stricken. The question to you is: Was the foreman there?

The Witness: You mean when I was organizing or signing them up?

Trial Examiner Batten: Yes, when you were talking to these men.

The Witness: No.

Trial Examiner Batten: He didn't hear what you said.

The Witness: No, the foreman didn't hear what I said.

Q. (By Mr. Ryan): Can you give us some specific fact which [957] would indicate whether or not the foreman knew that you were active in this C.E.A.?

A. Well, later on I can bring that out. But at the present time we are covering the first phases of the Cannon Employees Recreation Association.

Q. Did you continue to be active all the way up to, say, the first National Labor Relations Board election that was held there in September, 1941?

A. Yes, I was active all the way through.

(Testimony of Herbert L. Caffarel.)

Q. Did you continue with Mandella to be active? Did you work together all of that time?

A. Yes.

Q. Who else besides you and Mandella, if any-one, were active in this promotion of the Association?

A. Well, there was the members of the Board, Andy Bereznak—shall I name them?

Q. Yes.

A. Andy Bereznak, Roy Whitney, a fellow by the name of Fish.

Q. George Fish? A. Yes, George Fish.

Q. Where did he work at that particular time, do you know? Do you know what his job was in the plant?

A. Roy Whitney, I believe, worked in the assembly. And George Fish—I don't remember where he was working. Pete Vitale was working in the assembly. [958]

Mr. Cannon: Who?

The Witness: Pete Vitale. And Andy Bereznak, I think he was working on a punch press—I am not sure—on the swing shift. I am not so sure.

Q. (By Mr. Ryan): Do you know what Whitney's job was, whether he was just an ordinary worker?

A. Yes, he was just an ordinary worker. Several of the girls, Helen Olsen and Margaret Gellinson.

Q. Where did she work?

A. She worked in Department 11, in Glen Mc-

(Testimony of Herbert L. Caffarel.)

Clung's department. It was Herb Elgin's department, also. And Bernice Perkins.

Q. Now, did you ever see any articles of incorporation for the Association that you were working for?

A. Well, no. No, I didn't see any articles of incorporation.

Q. Did you ever see them? Did you ever see a booklet?

A. Yes, later on, the rules and the by-laws of the Association came in public.

Q. Mr. Caffarel, I show you Board's Exhibit 35, entitled "Cannon Employees' Association, Articles of Incorporation, By-Laws." I direct your attention to the outside of the booklet which says, "Incorporated under the laws of the State of California, March 13, 1941." Were you active about that time in soliciting members for the so-called Recreation [959] Association? A. Yes.

Q. Will you tell us whether or not there were two organizations side by side in the plant, that is, Recreation Association and an Employees' Association, or whether there was just one organization?

A. Well, the Cannon Employees Recreation Association lapped into the Cannon Employees' Association. I had some cards printed and Ned give me the cut and everything else, how to have it printed. That is, the wording, and I had them printed. It was Cannon Employees Recreation Association. But, however, during the time that this was printed we were called by some members—the bulletins that

came out of the gate were C.E.A., had C.E.A. on them. So we couldn't quite define which it was, which one it was. But Ned said that was all right, he knew what he was doing, so I don't know what happened.

Trial Examiner Batten: Let me understand you. You mean during the time you were soliciting people for the Recreation Association there were bulletins calling it the C.E.A.?

The Witness: That is right. In other words, we continued to use the cards, the Cannon Employees Recreation Association.

Trial Examiner Batten: You mean even after it was incorporated under the C.E.A.? [960]

The Witness: That is right. I don't know how long, it might have been a couple of months.

Q. (By Mr. Ryan): You got some cards printed, I believe you said, some additional cards?

A. Yes, that is right.

Q. About when was that that you got them?

A. I can't remember when it was. It was after the first yellow cards were printed, the ones with the Cannon emblem on them, with the round corners; those were the first that were ever printed.

Trial Examiner Batten: Show him the red ones. Were they the ones that followed the yellow ones?

The Witness: Yes, they followed the yellow.

Trial Examiner Batten: I think there are one or two there that have been received.

The Witness: The different colored ones were the different departments, like that (indicating).

(Testimony of Herbert L. Caffarel.)

That is a different department, Department 11. Red was Department 2, and so on down the line.

Q. (By Mr. Ryan): Were blue ones in that bunch of cards I gave you and yellow ones and red ones; isn't that right?

A. Yes, that is right.

Q. You say various colors were used in the various departments? A. That is right. [961]

Q. But the wording on the cards is the same.

A. Is the same.

Q. "Cannon Employees Recreation Association?" A. That is right.

Q. Looking at the card on the top of the pile of cards which you are now looking at of Cannon Employees Recreation Association, I notice across the bottom, which is the place for the punching of the various months to show payment of dues by the members. A. That is right.

Mr. Cannon: May I ask a question there? Are these cards of different colors, aside from the first batch of yellow which had the emblem on them, are the other cards you had printed for Cannon Employees Recreation Association, too?

Mr. Ryan: Yes, they are.

Q. (By Mr. Ryan): The one on top I notice is punched out as late as July, which indicates that the person whose card it is appears to be Evelyn Beck, and was paying dues with the Recreation Association as late as July, 1941, at least; is that right?

A. That is right.

Q. By the way, I started to show you this

(Testimony of Herbert L. Caffarel.)

Board's Exhibit 35. You filed this as the articles of incorporation of the Cannon Employees' Association? A. Yes. [962]

Q. I notice that page 8 is entitled "By-Laws, Cannon Employees' Association (as amended November 5, 1942)." Were you there when the amendments were made? A. No, I wasn't.

Q. You were working for the company, though; isn't that right?

A. Yes. I mean I wasn't at the Association's office.

Q. Now, Mr. Caffarel, about June 9, 1941, I ask you if the Cannon Employees' Association filed a petition with the National Labor Relations Board for an election?

Mr. Ryan: Counsel, we can probably stipulate to that. I have the file in the case. [963]

* * * *

Mr. Cannon: Yes, I will stipulate to that.

Trial Examiner Batten: What is the number of that case?

Mr. Ryan: That case number is 21-R-1354.

Trial Examiner Batten: Now, is that the case where there was an election held later?

Mr. Ryan: Yes. A strike took place early in September. It was after that.

Trial Examiner Batten: There were objections filed to the election?

Mr. Ryan: Yes.

Trial Examiner Batten: Then there was a Board petition?

(Testimony of Herbert L. Caffarel.)

Mr. Ryan: There wasn't a Board hearing on the matter.

Trial Examiner Batten: It was by consent?

Mr. Ryan: Yes.

Trial Examiner Batten: There were objections. And did the Board pass upon the objections to the election?

Mr. Cannon: Yes.

Trial Examiner Batten: Well, you don't need to look it up now, but do that, Mr. Ryan, so the records are complete. Get together all the formal papers in connection with that case, the petition, the report of the election, the objections and the disposition of them, so that we may have them in the record. Mr. Ryan, I assume you are aware of the fact that Board's Exhibit 35 hasn't been received.

Mr. Cannon: It may be, as far as I am concerned. [964]

Mr. Ryan: I offer it in evidence as Board's Exhibit 35.

Trial Examiner Batten: It may be received.

(The document heretofore marked as Board's Exhibit No. 35, for identification, was received in evidence.)

* * * *

Q. (By Mr. Ryan): Mr. Caffarel, I show you Board's Exhibit 35 and ask you whether or not, after you have read it, you ever received a copy of

(Testimony of Herbert L. Caffarel.)

that while you were in the employ of the company, about May, 1941?

A. Yes, these were given out at the gate by the Cannoneer staff; Frank Hobart staff.

Q. That Cannoneer paper, the staff of the Cannoneer paper? A. That is right.

Mr. Cannon: What is that? Is that a "Making Dreams Come True" letter?

Mr. Ryan: No, that is the letter suggesting the formation of a contact committee.

Q. (By Mr. Ryan): Now, Mr. Caffarel, after you had received [965] that letter, did you have occasion to become associated with the formation and administration of that contact committee which is referred to in Board's Exhibit 5?

A. Yes, I became its chairman.

Q. Now, I ask you, Mr. Caffarel, what were the mechanics by which you became the chairman of that Association?

A. Well, after this letter was given out by the company, the machine was set up by Hobart's office, crew. That is, Mary Torrence came into the department.

Mr. Cannon: Came to your department?

The Witness: Yes, that is right. And the ballots had a perforated corner with the number of the employee, and they were passed around, and we all voted, and they were picked up again. Before you put the ballot in the box, the stub, the corner was torn off and it was retained by Miss Torrence.

Q. (By Mr. Ryan): This girl?

(Testimony of Herbert L. Caffarel.)

A. That is right, this girl, and it so happened, in my particular department, a fellow by the name of Bob Latham and I were the two highest numbers.

Q. Under that voting?

A. Under that voting. Then we had another election, an election eliminating either he or I. I won out over him.

Mr. Cannon: What is this other fellow's name, Bob what? [966]

The Witness: Bob Latham.

Trial Examiner Batten: How was the second election conducted?

The Witness: The same way.

Q. (By Mr. Ryan): About how long was it after this document, Board's Exhibit 5, was received by you, that this election was held, would you say, approximately?

A. I don't know. However, the letter stated the date that this contact committee was going to begin. Mr. Cannon stated that in the letter.

Q. The ballots that were brought down were brought down by this Mary Torrence?

A. That is right.

Q. Into the department? A. Yes.

Q. She was employed in Mr. Hobart's office?

A. I think she was co-editor or assistant editor or something.

Q. Was it during your working hours she came into the department?

A. Yes. The first time it was around 3:00 o'clock

(Testimony of Herbert L. Caffarel.)

in the afternoon, and the second time, I don't remember whether it was afternoon or in the morning.

Q. Did she have the ballots with her when she came in and gave them out to you? [967]

A. That is right.

Q. Did you all mark them as you were being given the ballots? A. That is right.

Q. Did she have the ballot box with her?

A. Yes.

Q. You deposited the ballot in the box after you had marked it; is that right?

A. That is right.

Q. And she took the ballots and ballot box and went out of the department; is that right?

A. That is right.

Q. Did you thereafter receive information to the effect you had been nominated?

A. Yes. She came back with a big sheet with all the different departments, and who was elected, and so forth and so on. In other words, the tally sheet. She told me I was elected in Department 2. There was to be a meeting in the conference room upstairs at a certain date. Shall I continue?

Q. Yes.

A. And on this certain date, why, we all met up there, all the contact men.

Q. About how long was it after the first election that you had the second election, the run-off election, I [968] suppose it was.

A. It was only a few days later.

(Testimony of Herbert L. Caffarel.)

Q. About how long was it after that that she notified you of the results?

A. Approximately a week.

Q. Then you held a meeting, you gathered up in the conference room, those who had been elected, according to her information?

A. That is right.

Q. Whom did you meet with up there, if any one?

A. Well, we all met up there. Mr. James H. Cannon was present and Bob Cannon was present.

Trial Examiner Batten: Talk a little louder.

The Witness: Mr. James H. Cannon and Bob Cannon were present, and they suggested we form the machinery of the contact committee. So they proceeded. That is, we proceeded to elect a temporary chairman and a vice-chairman and a secretary.

In that meeting it was proposed to have by-laws written to handle the contact committee. I was elected the temporary chairman. "Cupid" Kane was elected vice-president and Claude Turner was secretary.

Trial Examiner Batten: Claude Turner?

The Witness: Claude Turner, yes. At the next meeting, why, we proceeded to elect the final officers of this contact committee. It so happened that each man was re-elected [969] from the temporary position we held before. In other words, I became chairman and "Cupid" became vice-chairman.

Q. (By Mr. Ryan): By whom?

A. Members of the contact committee.

(Testimony of Herbert L. Caffarel.)

Q. You had an election between the members to decide who would hold the respective offices?

A. That is right.

Q. I show you Board's Exhibit 9, Mr. Caffarel, dated June 23, 1941, and ask you whether or not that is a document that was put out, that you participated in the putting out of? There are two pages to it. I want to call your attention to that.

A. There are supposed to be three pages.

Mr. Cannon: Supposed to be three pages?

The Witness: No, that is right, yes. One of them was written by myself..

Trial Examiner Batten: Which one?

The Witness: The one thanking the committee.

Mr. Cannon: The one that has the date on it of June 23, 1941?

The Witness: That is right, yes. Yes, I wrote this (indicating). Shall I read it?

Q. (By Mr. Ryan): No, you don't have to read it. That is the first page of the exhibit?

A. That is right. I wrote it and I took it up to Bob Cannon [970] and asked him what he thought about it.

Bob said, "Take it over to Frank Hobart and he will take the fly specks out of it for you." Then I took it to Frank Hobart. The next time I saw it it was given out at the gate by the Cannoneer staff attached to a letter by James H. Cannon.

Q. Well, what you mean is when you wrote it up you wrote up a rough draft and took it to Bob Cannon, first, the rough draft of this document.

(Testimony of Herbert L. Caffarel.)

A. That is right, yes.

Q. Then he suggested you take it to Hobart?

A. Yes.

Q. You took it to Hobart; is that right?

A. That is right.

Q. Then thereafter did you receive any communication from Hobart to come to his office about it?

A. No, I didn't. But, however, I received a communication from upstairs—I don't remember who it was—one of the girls, and they wanted me to put my signature—

Trial Examiner Batten: On a stencil?

The Witness: That is right. As it appeared here (indicating), as chairman and accepted by James H. Cannon; his signature appears.

Q. (By Mr. Ryan): When you went up to put your signature on the stencil the document was as it now appears, Board's [971] Exhibit No. 9, being a 2-page document. A. Yes.

Q. You affixed your signature as it appears there (indicating)? A. Yes, that is right.

Q. The document was distributed to the employees thereafter? A. At the gate, yes.

Q. Who distributed them?

A. Well, the Cannoneer staff. Mary Torrence was out there, and there was another girl, I believe, that worked there at that time.

Q. Thereafter did you have meetings of this contact committee?

A. Yes, we had quite a few meetings.

(Testimony of Herbert L. Caffarel.)

Q. Where would you meet?

A. Meet upstairs in the conference room adjoining James H. Cannon's office.

Q. Did you have any regular meeting day each week?

A. Well, we met after working hours; that is, after our working hours, the day shift. But the committee had contact men from every department and every shift that blanketed the whole shop.

One Saturday we had a case—I have forgotten who it was—that was held on a Saturday afternoon during our work period, that is, during the day shift work period. [972]

Mr. Cannon: These are meetings of the grievance committee you mean?

Mr. Ryan: Yes.

Trial Examiner Batten: What do you mean you had a case?

The Witness: I didn't understand.

Trial Examiner Batten: What do you mean you had a case?

The Witness: Well, that is, a grievance case.

Trial Examiner Batten: Tell us about it.

The Witness: I have forgotten the fellow's name. I have forgotten the particulars of the case, but I do remember that it was on a Saturday afternoon.

Trial Examiner Batten: Is that what you used to do at your meetings, take up grievances the employees had?

The Witness: That is right. It was originally

(Testimony of Herbert L. Caffarel.)

set up as a contact committee to contact the difficulty that arose between management and employees.

Trial Examiner Batten: Was there any representative of the respondents present at these meetings you had?

The Witness: Yes, Bob Cannon would sit in some and Mr. James H. Cannon would sit in some.

Trial Examiner Batten: Anyone else?

The Witness: No, not that I remember.

Q. (By Mr. Ryan): Did you ever take up the matter of discharge of an employee as a grievance?

A. Yes, we discharged a die caster by the name of Bill [973] Citrowski.

Mr. Cannon: After the grievance hearing, you mean?

The Witness: That is right.

Q. (By Mr. Ryan): Did you take up the matter of his discharge as a committee?

A. Yes. It ran through the committee.

Q. Did you confer with Mr. Bob Cannon or Mr. Jim Cannon, or both of them, relative to that matter?

A. I didn't confer with them. We had a committee set up of three men that would bring the grievances, that is, the subject of the grievances, after it was passed by the Board, to the management. I didn't do that directly. We had a committee set up for that purpose.

Q. Three of your own members would go up and contact the management about it?

(Testimony of Herbert L. Caffarel.)

A. That is right. And we had a case of discharging a foreman.

Mr. Cannon: I take it these matters, if the Commissioner please, are not being heard here because of improper discharge. I suppose this testimony runs to the matter of the organization of the grievance committee, so-called, the contact committee.

Mr. Ryan: Yes.

Trial Examiner Batten: I assume the only purpose of it is simply to show what the grievance committee did, the contact committee.

Mr. Cannon: Yes. [974]

Trial Examiner Batten: It is not for the purpose of passing upon any discriminatory action.

Mr. Cannon: That is what I understand.

Trial Examiner Batten: No.

Mr. Cannon: Fine. All right.

Q. (By Mr. Ryan): In the case of the foreman, Mr. Caffarel, that you took up the matter of his discharge, did you take that up as a committee with Mr. Cannon?

A. Yes. Joe Kales was foreman of the die cast. The grievance was brought up by the employees.

Q. Had he been discharged.

A. No, there were no grievances against the foreman. It was brought up by the employees. Then we started the procedure of having the grievances—well, that is wrong. In other words, we acquired the grievances, we received them. Then Mr. Bob Cannon and Mr. Cannon himself more or less tried Joe Kales in our presence.

(Testimony of Herbert L. Caffarel.)

Mr. Cannon: Tried what?

The Witness: Tried him. That is, they questioned him, I would say, in our presence, in the contact committee's presence. And Mr. Cannon had a stenographer there that took down the contents of the trial.

Q. (By Mr. Ryan): After the trial was over, was a decision made by anybody?

A. Yes, a decision was made by, I believe, Mr. Cannon and [975] Mr. Cromwell was waiting downstairs in his office for the verdict. I don't remember exactly—I wasn't there—but I don't remember exactly what took place.

Trial Examiner Batten: You mean you weren't present?

The Witness: I wasn't present between Mr. Cannon and Mr. Cromwell.

Q. (By Mr. Ryan): I am talking about what happened in the trial, at the conclusion of the trial, about the decision, if any, if you know.

A. We didn't vote on it. We were just in there and listening, and the employees that were called up as witnesses—there was the contact committee and employees that were called up as witnesses, both of the Mr. Cannons, and the stenographer who were present.

Q. The grievance had been brought to Mr. Cannon through your committee; is that right?

A. Yes, more so through John La Bash. He was working in this die cast department.

Trial Examiner Batten: As I understand, some

(Testimony of Herbert L. Caffarel.)

of the employees complained to your committee, first, about the conduct of this foreman?

The Witness: Yes, I was getting to that. Johnny La Bash was the floor leader of these complaints. He was a member of the contact committee, as I remember.

Q. (By Mr. Ryan): Now, can you tell us, relative to the [976] personnel of this contact committee, whether or not Cal Cannon was ever a member of it?

A. Cal Cannon was elected later on as a member of the contact committee. I don't know in whose place, whether it was Claude Turner or Bruce Arnold.

Mr. Cannon: Well, I submit the reference to this document here couldn't, by any possible chance, refresh his recollection. Cal Cannon's name doesn't appear there, or anything else.

Trial Examiner Batten: That has been stated to him.

Mr. Ryan: The document doesn't bear the name of Cal Cannon.

Trial Examiner Batten: As I recall, the witness looked at it and said he recalled that later he was elected to the contact committee to take the place of someone else.

The Witness: That is right.

Trial Examiner Batten: Isn't that correct?

The Witness: That is correct.

Q. (By Mr. Ryan): What department did he represent as a member of the contact department?

(Testimony of Herbert L. Caffarel.)

A. I don't know for sure, but he was connected upstairs, that is, in the office upstairs.

Trial Examiner Batten: Who was the person you say was later elected?

The Witness: Cal Cannon. [977]

Q. (By Mr. Ryan): What position did he hold with the company at that time?

A. I don't know what position.

Q. Well, first of all, will you tell me how long that contact committee continued to function, approximately.

A. Oh, I think somewhere in the neighborhood of three months, I believe.

Q. Three months?

A. I don't know for sure.

Q. About three months? A. Yes.

Q. It was sometime between the beginning of the contact committee and about three months later that Cal Cannon was elected to the committee; is that right? It must have been.

A. You mean from the time the committee was started until the time Cal Cannon was elected?

Q. No. I am trying to find out approximately when he took a position on that contact committee.

A. Well, I don't know when he took a position. I don't know the date, but I do know he did take the position as a contact member later on, after the inception of the contact committee.

Q. Now, while you were chairman of that contact committee, did you continue any activities with the Cannon Employees' Association? [978]

(Testimony of Herbert L. Caffarel.)

A. Do you mean continue organizing?

Q. With Mandella. A. Yes, I did.

Q. Did you continue to wear your badge?

A. No, I took the badge off. I took the badge off after I became chairman of the contact committee.

Q. Did you ever prepare literature for the Association? A. Occasionally, a few pieces.

Trial Examiner Batten: Mr. Witness, will you take that Board's Exhibit 9? Is that the one that lists the contact committee?

The Witness: Yes.

Trial Examiner Batten: Are there any names on there of people who were active in the Recreational Association or the Cannon Employees' Association?

The Witness: Besides myself?

Trial Examiner Batten: Besides yourself, yes.

The Witness: One here definitely, Frenchy Martin. I believe he was a member of the Board.

Trial Examiner Batten: Of what organization?

The Witness: He had been formerly a member of the board of the Cannon Employees—I don't know whether it was Association or Recreation.

Trial Examiner Batten: One or the other. Are there any names on there other than yours and Martin who later became [979] active in the C.E.A.?

The Witness: I will check up and see. Yes, James Barton. He became a member of the board in 1944.

Mr. Cannon: James Barton?

The Witness: Yes, Jimmy Barton.

(Testimony of Herbert L. Caffarel.)

Mr. Cannon: How many more are there on there besides yourself?

The Witness: Frenchy Martin and Jimmy Barton.

Mr. Cannon: That is Caffarel and Martin and Barton?

The Witness: That is right.

Mr. Cannon: How many others are there on that contact committee than those three who were on the board later of the C.E.A.?

The Witness: I think there were 18 of us altogether.

Q. (By Mr. Ryan): Now, I ask you, Mr. Caffarel, if you continued as chairman of the contact committee all through its existence?

A. Yes, I did.

Q. Now, was that organization, did you go through the procedure of dissolving it?

A. Yes. After the election between the C.I.O. and the C.E.A.

Mr. Cannon: That is the one of September 9th?

The Witness: The first election. Ned contacted me and——

Q. (By Mr. Ryan): Ned Mandella? [980]

A. Yes. In the plant it was. He contacted me in the plant and he says, "Well, Doc,—” He didn't say I or you. He says "we.” I definitely remember that.

He says, "Well, we have to disband that contact committee.”

I said, "What do you mean 'we'?"

(Testimony of Herbert L. Caffarel.)

He said, "We will have to disband it." He said, "I want to be there when you disband it."

I said, "Well, you can come along if you want to." I said I would disband it. I have forgotten whether it was that same afternoon or a few afternoons later. However, we went upstairs together at this meeting of disbandment.

Trial Examiner Batten: You say you disbanded it. What do you mean?

The Witness: In other words, we made a motion the committee wouldn't exist any more, and so forth and so on.

Q. (By Mr. Ryan): The meeting took place upstairs where?

A. In the conference room.

Q. There at the plant? A. That is right.

Q. Who was present besides yourself and Mandella?

Mr. Cannon: Did you say Mandella was there?

The Witness: Yes, Mandella was there. The majority of the contact committee members. And after the motion was made and passed and everything, I got out of the chair— [981]

Q. (By Mr. Ryan): What motion was made?

A. That we disband the contact committee.

Q. Who made the motion?

A. I have forgotten who made the motion.

Q. Was it voted on?

A. That is right, it was voted, and it went through unanimously. I got up and said, "Here is your chair, Ned."

(Testimony of Herbert L. Caffarel.)

He took the head of the table and he began making a speech, saying he was going to take the contact committee in its entirety, because we had already had experience of grievances, and he was going to make that part of the C.E.A.

Q. Now, Mr. Caffarel, I ask you if late in 1942 you ran for the office of president of the Cannon Employees' Association.

A. No, I ran for office as a member of the board.

Q. A member of the board of directors?

A. That is right.

Q. I ask you if it was around the latter part of November, 1942, to the best of your recollection?

A. Yes, it was the latter part of the year. The election was held in the cafeteria. [982]

* * * *

Q. (By Mr. Ryan): Mr. Caffarel, thereafter you ran for membership on the board of directors in about November, 1942?

A. That is right. The Association——

Q. Just a minute, now, Mr. Caffarel. Where did the election take place?

A. The election took place in the cafeteria.

Q. In the cafeteria? A. That is right?

Q. How long were the polls open, if you remember?

A. Well, they were open long enough to catch all the three shifts.

Trial Examiner Batten: How long would that be?

The Witness: Well, that would be—I think we

(Testimony of Herbert L. Caffarel.)

stayed open until—well, sometimes we would have the balloting up to 12:00 o'clock at night, and then sometimes we would stop at about 9:00, after we would catch the swing shift on their lunch hour.

Q. (By Mr. Ryan): What time would they begin in the mornings?

A. 6:30 or 7:00 o'clock.

Q. In the morning? A. Yes.

Q. And the occasion when you were running for the office of [985] member of the board of directors, did you personally act as an election clerk or teller of the votes? A. No, I never did.

Q. You did not? A. No.

Q. As a result of that election, did you become not only a member of the board but the president of the Association?

A. I was elected by the board as the president of the Association.

Mr. Cannon: You were elected by the board?

The Witness: That is right, as president of the Association. [986]

* * * *

Q. As president of the Association, Mr. Caffarel, I ask you whether or not you had occasion to leave the plant on any occasion during your working hours to take care of matters pertaining to the Association; as an officer? [990]

A. Yes, we had several meetings of the Association during working hours. Not when I was president, but when I was treasurer I used to go to the bank and deposit the check during working

(Testimony of Herbert L. Caffarel.)

hours. I would go upstairs and get the check and deposit it, and go to the bank.

Q. While you were president of the organization, did you have any pass or anything to get in and out of the plant?

A. Mr. Hawkinson gave me a pass. It was a printed card.

Q. About how long after you became president did you get the card, do you recollect?

A. I don't remember how long it was.

Q. Can you give an approximate estimate as to the time?

A. I imagine it was about three or four weeks afterwards, because I had to get a pass from my foreman previous to that time. The pass Mr. Henry Hawkinson gave me I could go just right out the gate.

Q. Do you have the pass with you?

A. No, I haven't.

Q. What happened to it?

A. I guess I destroyed it. Incidentally, Bill Attaway had one similar to mine.

Q. Was he a board of directors member?

A. Yes, he was a member of the board.

Q. Now, what did this pass entitle you to, if you can recall? [991]

A. Oh, just as a recognition to pass the guard. In other words, you couldn't walk out the gate without—you just couldn't walk out the gate, they wanted to know why you were leaving the plant.

(Testimony of Herbert L. Caffarel.)

This pass signified that it was all right for me to leave the plant.

Q. When?

A. Whenever I saw fit to leave the plant.

* * * *

Trial Examiner Batten: You had a pass that permitted you to go in and out any time you wanted to?

The Witness: That is right.

Trial Examiner Batten: And no one questioned you; is that right? [992]

The Witness: That is right, yes.

Q. (By Mr. Ryan): Can you mention the nature of any of the affairs you went in and out of the plant at will to take care of while you were president?

A. One of them was the time that we went to the bank to form this—that is, for the recognition of our status as executive members of the Board; that is, financial status. That was during the day.

Q. Was that while you were president?

A. That was while I was president; Andy Be-reznak and myself, and James B. Nolan.

Q. Was he a member of the board?

A. He was a member of the board, also.

Q. Shortly after you became president of the organization then you went to the bank, did you, that you were using as the depository for the C.E.A. financial matters and had a conference with them there to advise them as to the fact that you were new successors to the old officials of C.E.A.?

(Testimony of Herbert L. Caffarel.)

A. That is right.

Q. Now, approximately how long would you say it was after you became president of the C.E.A. that you did that?

A. Several days afterward.

Q. Now, where did you go? Where was the bank you went to?

A. The bank was the Citizens Bank on the corner of Daley [993] and Broadway, Lincoln Heights district.

Q. Have you named all that went with you?

A. All that I remember, yes.

Q. Bereznak and Jim Nolan?

A. And myself.

Q. About what time of day did you go down there?

A. It was in the afternoon, after 12:00 o'clock.

Q. But during your working hours?

A. Yes, during my working hours.

Q. Can you tell us about how long you were away from the plant on that occasion?

A. I think it took us about a half hour at least.

Q. You returned to the plant after you had been to the bank?

A. Yes.

Q. You returned to your job?

A. Yes.

Q. Did you receive any deduction for that?

A. Not that I know about.

Q. If you had you would likely remember it; wouldn't you?

Mr. Cannon: I submit it is argumentative.

(Testimony of Herbert L. Caffarel.)

Trial Examiner Batten: Well, did you punch out your time card?

The Witness: I don't remember whether I did on that occasion or not. [994]

Mr. Ryan: If that is the answer, I would like the time card.

Q. (By Mr. Ryan): You haven't fixed the time you went yet. Did you ever have a conference while you were president relative to any parties or social affairs that the C.E.A. was going to sponsor, during working hours?

A. Not as president, but as treasurer. We had meetings over at the Association's office.

Q. When did you become treasurer of the organization, approximately?

A. I became treasurer—Mrs. Florence Maynard was the elected president.

Q. Do you remember what year that was when Mrs. Maynard became president?

A. That was in 1943.

Q. About March, 1943?

A. Yes, just about then.

Q. She became president and you became treasurer?

A. That is right. She became president by a majority vote. And I became president by choice of the board of directors' members vote. [995]

Q. You became treasurer?

A. No, I became president by the Board members' vote.

(Testimony of Herbert L. Caffarel.)

Q. You were treasurer then, were you not, until about the latter part of December, 1943?

A. 1943?

Trial Examiner Batten: 1942; wasn't it?

The Witness: No.

Mr. Cannon: 1943.

The Witness: I was elected a member of the Board the first time in 1943.

Mr. Cannon: A member of the Board?

Mr. Ryan: No.

Q. (By Mr. Ryan): Mr. Caffarel, you were president before Florence Maynard; were you not?

A. That is right.

Q. Florence Maynard became president in March, 1943; isn't that right?

A. That is right.

Q. So you must have been president before March, 1943? A. 1942.

Q. 1943 is when she became president.

A. Yes.

Q. All right. Then you took over the job of treasurer after she became president; isn't that right? A. That is right. [996]

Q. You continued to be treasurer until the latter part of that year, isn't that right, from March until December, 1943?

A. Yes, that is right, until the latter part.

Q. Now, Mr. Caffarel, while you were treasurer, will you tell us what some of your duties were as treasurer of this association?

A. Well, the duties as treasurer was to make

(Testimony of Herbert L. Caffarel.)

the deposits in the bank and write the checks, that is, cosigner with the president of the association. And to turn over all bills and everything else to the secretary of the association.

Q. Now, you would take these deposits of the C.E.A. down to the bank; isn't that right?

A. Yes.

Q. To deposit them to the account of the C.E.A.?

A. That is right, yes.

Q. The banks close around here about three o'clock in the afternoon; isn't that right?

A. That is right.

Q. So each month you would receive a certain amount of money from the company; isn't that right? A. Yes.

Q. And upon receipt of the money you would take it down to the bank each month while you were treasurer; isn't that right?

A. Yes, I would take it down in the afternoon.

Q. Before bank closing time?

A. Yes, that is right, before bank closing time. I would stop over at the association and pick up the bank book, and then I would make the deposits and bring the bank book back to the association. And then I would go back to work.

Q. On those occasions when you would leave the company's plant and return, would you receive any deductions in wages for the time you would be away from your job?

A. No, in these particular instances I didn't receive any check-off.

(Testimony of Herbert L. Caffarel.)

Q. Were there occasions when other board members would accompany you to the bank on these trips to deposit funds for the C.E.A.?

A. Well, at one time there was Florence Maynard, myself, and Johnny Gibson went to the bank, and I think it was pertaining to some changes or something. I don't know what. That was during working hours. I always told my foreman I was going, when I left the department.

Q. Pardon?

A. I always told the foreman I was leaving when I left the department.

Trial Examiner Batten: What would you tell him?

The Witness: I told him I was going to the bank.

Q. (By Mr. Ryan): Now, were there ever any occasions when you would be over to the C.E.A. office during your working [998] hours, while you were either president or treasurer?

A. Well, the one time there was something about some employee in Department 11. I don't remember what the trouble was. But we met at the association office in the morning and we threshed out this grievance between this employee. I don't know what—I know the employee had a grievance of some kind. We threshed it out right there that morning. And we had another meeting at the association office concerning Henry Jones. Henry Jones was elected with Florence Maynard as a member of the Board. He was on the janitor's staff

(Testimony of Herbert L. Caffarel.)

and John LaBash, who was the foreman of that respective department, had caught Henry Jones stealing. It was pertaining to laundry.

Q. At least he was accusing him of that; is that right?

A. That is right. We wanted to thresh it out.

Q. You took up that matter—

A. At the association office. And the next day we had another meeting with Mr. Wilcox, and finally he was discharged.

Q. Do you recall, was that while you were president you took that up?

A. I think I was treasurer.

Q. On those occasions, were your wages deducted for the time you were away from your work?

A. I don't think so. [999]

Mr. Ryan: Miss Reporter, will you mark this as Board's Exhibit next in order, please.

(Thereupon, the document referred to was marked Board's Exhibit No. 55, for identification.)

Q. (By Mr. Ryan): Mr. Caffarel, while you were treasurer of the C.E.A., that organization published a weekly newspaper, isn't that right, to the employees? A. That is right.

Mr. Ryan: I have had marked as Board's Exhibit 55, for identification Volume 1, No. 16 of the C.E.A. News, dated Saturday, July 17, 1943.

Q. (By Mr. Ryan): Mr. Caffarel, I direct your attention to page 3, to the first column there on the

(Testimony of Herbert L. Caffarel.)

left-hand side of the page, "Board of Directors Meetings by John Gibson, Secretary. Minutes of the Board of Directors Meeting. The directors of the Cannon Employees' held a special meeting in the cafeteria on July 10th at 8:10 a. m."

I ask you if you were present? Read this and tell me whether you were present or not.

A. Yes, I was there.

Q. The subject matter related therein, do you remember that taking place at the meeting?

A. Yes, the C.E.A. wanted a photographer and John Petty wanted us to advance him the money to buy a camera, and we would deduct out of his wages every week and he would sell— [1000] that is, the selling of the pictures—we would deduct the amount from the price we had advanced on the kodak. The meeting was in the cafeteria with Florence Maynard and the Board of Directors.

Q. Now, the hours of the meeting took place on July 10th?

Trial Examiner Batten: Meeting of what?

Q. (By Mr. Ryan): The hours were from 8:10 a. m. in the morning to 8:45 on July 10th. That was during your working hours?

A. Yes. [1001]

* * * *

Q. (By Mr. Ryan): Now, the persons named in the article which I directed your attention to, the minutes of the Board of Directors' meeting, were present there at the meeting; is that right?

A. That is right.

(Testimony of Herbert L. Caffarel.)

Q. I ask you whether or not you received any deduction from your pay for the time you spent at that meeting? A. No, I did not.

Mr. Ryan: I offer Board's Exhibit 55 in evidence. [1003]

Mr. Cannon: I object, as to the objection heretofore made, it is hearsay and not within the basis of the charge laid.

Trial Examiner Batten: It will be received.

(Thereupon, the document heretofore marked Board's Exhibit No. 55, for identification, was received in evidence.) [1004]

* * * *

Q. (By Mr. Ryan): On that particular occasion, when he was first brought into the C.E.A. office there so the Board of Directors could look him over, I believe you stated that was around November some time, 1942? [1009]

A. Yes, that is right.

Q. You had to get him off the job and get him over there in that particular meeting?

A. Andy Bereznak invited him over.

Q. Anyway, he came in there?

A. He came in there during—that is, he came in during the working time of his shift; yes, that is right. If that is what you mean.

Q. How long did your meeting last there then, about?

A. Well, the meeting lasted until about 5:30.

Q. From what time to what time? When did it begin?

(Testimony of Herbert L. Caffarel.)

A. We always began our meetings about 4:35 or 4:40, just time enough to wash up and then come over there.

Q. What took place at the meeting? What was said and what was done and by whom?

A. Well, Andy said, "I brought Mr. Franklin over to introduce him to some of the members of the Board that don't know him." And the introductions went on.

Then I called the meeting to order, and it was suggested by Andy that Mr. Franklin become the publicity man for the association. And he got a unanimous vote. Therefore, he was appointed by the Board to handle the publication.

Mr. Cannon: Will the Commissioner ask him to keep his hands down. I can't hear half what he says.

Trial Examiner Batten: You dropped your voice on the [1010] latter part of your statement. I didn't hear it.

The Witness: The motion was made and carried out, and Mr. Franklin was made publicity agent of the C.E.A. at this particular meeting.

Q. (By Mr. Ryan): Now, about June 29, 1944, Mr. Caffarel,—before that, did you resign from the job of treasurer of the C.E.A. the latter part of 1943?

A. No, I was defeated in the final participation—

Q. There was an election held in about December, 1943, for new members?

(Testimony of Herbert L. Caffarel.)

A. That is right.

Q. In that election somebody succeeded you; is that right? A. That is right.

Q. Florence Maynard continued on as an official of the union, however, thereafter?

A. That is right. They had an election and Johnny Gibson won out in the majority vote over Florence Maynard. And Johnny Gibson became the president of the association.

Q. Florence Maynard continued on in the Board in another capacity?

A. Yes, I believe she continued as treasurer or secretary. I don't know. I wasn't a member of the Board after that.

Q. Then do you recall that Rachel McBurnie ran for the Board of Directors, as a member, in the spring of 1944?

A. Yes. I actively campaigned for Rachel McBurnie. [1011]

Trial Examiner Batten: For whom?

The Witness: For Rachel McBurnie.

Q. (By Mr. Ryan): She was elected?

A. That is right. She was elected by the Board and seated for a few minutes and then unseated.

Mr. Cannon: I couldn't hear.

The Witness: She was elected a member of the Board and seated for a few minutes, and then unseated again.

Q. (By Mr. Ryan): Did you become opposed to the policies that Franklin and Gibson had while they were officials in 1944 of the C.E.A.?

(Testimony of Herbert L. Caffarel.)

A. I became opposed more so against Mr. Franklin than I did against Mr. Gibson.

Q. In campaigning for McBurnie, did you take the position that you were trying to get somebody on the Board who would be favorable to your position, as opposed to Franklin's?

A. That was the definite idea.

Mr. Ryan: Miss Reporter, will you mark this document as Board's exhibit next in order, for identification, please.

(Thereupon, the document referred to was marked Board's Exhibit No. 56, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 56, for identification, what purports to be a letter to Herbert Caffarel, signed by John Gibson, C.E.A. president. It is on the letterhead of Cannon's Employees' Association, Inc., dated June 29, [1012] 1944. I show it to counsel.

Trial Examiner Batten: What date was that?

Mr. Ryan: June 29, 1944.

Q. (By Mr. Ryan): I show you Board's Exhibit 56, for identification, Mr. Caffarel, and ask you if you received that document on or about the date it bears?

A. Yes, I received it from Johnny Gibson.

Q. Where were you?

A. In the foreman's office. In other words, a partition is there like this (indicating). I was standing there and Johnny came up and gave it to me.

(Testimony of Herbert L. Caffarel.)

Q. About what time of day was that?

A. It was around 4:30. It might have been a few minutes after. It was just about that time.

Q. Was anyone present when Mr. Gibson gave you the letter?

A. Rachel McBurnie, Isabel DeBreany, Frank Enna; Frank Enna being the foreman of the second shift of Department 2.

Trial Examiner Batten: Frank who?

The Witness: Enna; E-n-n-a.

Q. (By Mr. Ryan): Was there a conversation there at the time?

A. Yes. Rachel said she had gotten one of them.

Q. You are referring, by one of them, to Board's Exhibit 56, for identification?

A. One of these subpoenas. I tore it in half and threw it [1014] down. Frank picked it up and looked at me. He didn't say anything. He pasted it together and said, "You better keep it."

Mr. Cannon: Who said that?

The Witness: Frank Enna, foreman of the swing shift in Department 2.

Q. (By Mr. Ryan): Board's Exhibit 56, for identification, is pasted together, as though it had previously been torn apart?

A. That is right.

Q. You say this foreman, Frank Enna, pasted it together after you had torn it apart?

A. That is right.

Q. Now, the letter states:

"This is to notify you that you have been accused of the following offense:

(Testimony of Herbert L. Caffarel.)

“ ‘Spreading false reports maliciously, which are detrimental to the harmonious relations between members of this association, or between this association and anyone who may have a contract with this association.’ ”

“ ‘You will be tried on these charges in the manner provided by our C.E.A. by-laws on Saturday, July 1, 1944.’ ”

I ask you, after you received this document, did you take any action in respect thereto. What did you do after [1014] you got the letter?

A. Well, I went over to Florence Maynard a little later. I had some duties to perform. Lots of times we had to stay until five, lots of times we wouldn't get through with our duties until 5:15.

Q. What duties are you talking about?

A. Preparing the daily report on the incentive plan. The incentive plan was sort of a productive incentive.

Q. What did you have to do with that?

A. I was leadman in the punch press section.

Q. You were a leadman? A. That is right.

Q. How long had you been a leadman?

A. I had been a leadman over two years.

Q. Had you been leadman while you were president of the C.E.A. and treasurer of the C.E.A.?

A. Yes, I was.

Q. This incentive plan you had to make out, did you make that report out every day?

A. Every day we had to make it out.

Q. Just what was that report?

(Testimony of Herbert L. Caffarel.)

A. Well, it was just a copy. The production control—I don't know just how to explain it.

Q. What was the subject matter you put down there?

A. How many hours, how many minutes a fellow worked on a [1015] job, and what-not. We kept the report and we turned it over to the foreman at the end of the shift.

Q. Of the employees in your group, you would make that out on them?

A. That is right.

Mr. Cannon: Did you make it out for all of them?

The Witness: Yes. They had cards with the time elapsed, and time started, and everything else on all the different jobs. The jobs were all named——

Mr. Cannon: I say, did you make it out for all of them?

The Witness: All the employees, yes; we all did.

Mr. Cannon: I mean you yourself made it out for your group?

The Witness: I did, yes.

Trial Examiner Batten: Perhaps I don't understand it. The employees kept some sort of a record themselves, did they, and turned it in to you?

The Witness: No. These cards came from upstairs with the time marked on them. I would stick them on the punch press and these men who worked

(Testimony of Herbert L. Caffarel.)

on the job—and they kept a private record, yes, some of them, and some didn't.

On the end of the shift I would take all of the different cards of all the different jobs and make a written copy of the time and everything else. Then I would turn that [1016] in to the foreman and turn the cards in.

Trial Examiner Batten: In other words, you would make a sort of a compilation of the whole thing upon which the employees' wages were based; is that it?

The Witness: That is right. The whole entire shop worked like that.

Q. (By Mr. Ryan): I guess you were getting around to answering the question I asked you about what you did after you got that letter.

A. I went over to see Florence Maynard.

Q. You went over to see Florence Maynard. Where did you see her?

A. I saw her in the inspection—I mean, in the inspecting office of that department. Each department had an inspector's office.

Q. Is that where she was working at the time?

A. That is where she was working.

Q. Did you have a conversation with her there?

A. Yes. She said——

Mr. Cannon: May I have an objection to this, too, as being hearsay?

Trial Examiner Batten: You may have a continuing objection.

Q. (By Mr. Ryan): Mr. Caffarel, was anyone

(Testimony of Herbert L. Caffarel.)

present other than you and Miss Maynard at the time you had the conversation? [1017]

A. No, it was only Florence and I. She showed me a similar one to this and she said, "Johnny just gave it to me."

Q. That is Board's Exhibit 56, she showed you one like it? A. Yes.

Q. What did you and she say there in that conversation?

A. She didn't say much of anything. She was pretty angry about it.

Q. Did she say anything? Did she say anything that you can recall?

A. No, she berated Franklin and Johnny.

Trial Examiner Batten: Just a minute.

The Witness: I am trying to get——

Trial Examiner Batten: If you recall what was said there, you tell us.

The Witness: No, I can't recall.

Q. (By Mr. Ryan): What you said and what she said. A. No.

Q. You went over there to her? A. Yes.

Q. Did you go over to talk to her?

A. Yes. She said, "Look what I got."

Q. What did you say? You must have had something on your mind to talk to her about.

A. I went over to see if she received one of these. She [1018] said, "Yes, look what Johnny gave me."

I said, "Yes, I have one, too." I pulled it out of my pocket and showed it to her.

(Testimony of Herbert L. Caffarel.)

Q. Did you and she do anything or did you break up and go your separate ways?

A. I can't remember what she said.

Q. I am not asking you now what she said. I am asking you what you and she decided to do, if anything, and what you did do after that?

A. We didn't decide to do anything that afternoon. But several days later, or the very next day Rachel McBurnie contacted me and said she had engaged an attorney by the name of Scott Weller, and she asked me did I want his services. I said yes, I would accept his services.

Trial Examiner Batten: Keep your hand away from your mouth.

The Witness: I would accept his services in conjunction with the other, meaning Florence Maynard.

In the meantime the A.F.L. members of the tool and die room contacted me and asked me did I want Mr. Sokol, their representative, to represent me.

I said, "I will accept him jointly with Mr. Weller."

Then the C.I.O. contacted me and asked me did I want their attorney. I said, "Well, if you will get him for your member, I will accept him, but I won't hire him. I will [1019] accept him in conjunction with the other two attorneys."

Q. Then on July 1, 1944, did you and Florence Maynard and Rachel McBurnie and Arnold Benson—by the way, do you know Arnold Benson?

A. Yes.

(Testimony of Herbert L. Caffarel.)

Q. Did he also receive a letter such as Board's Exhibit 56, about the time you did?

A. Yes.

Q. Those I mentioned and Arnold Benson and Dave Sokol, A.F.L. attorney.

* * * *

Mr. Ryan: May I have the last question?

(The record was read.)

Q. (By Mr. Ryan): And an attorney named Weller. Did you all appear at the C.E.A. office on the morning of July 1, 1944?

A. It was in the afternoon.

Q. Will you tell us what took place at the office? Who was there representing the C.E.A., if anybody?

A. We were all sitting in front of the association office. We were all introduced to the different attorneys. We walked [1020] into the association offices and the entire staff of the Board members was there, and the business agents, and the secretary of the association, and the attorney for the association.

Q. Mr. Herntzinger?

A. That is right; he was there.

Mr. Cannon: I thought Mr. Lewis was the attorney for the C.E.A.

Mr. Ryan: This was in 1944. That was earlier.

Q. (By Mr. Ryan): Mr. Caffarel, will you relate what took place at that meeting, what was said and what was done?

(Testimony of Herbert L. Caffarel.)

A. Mr. Sokol, Mr. Weller, and all of us walked into the office, we all walked in to the C.E.A. office. All the members of the Board were sitting there, and the business agent, and the secretary and Mr. Herntzinger.

Mr. Sokol asked for time to prepare the case and for a bill of particulars, I believe.

Q. By the way, in Board's Exhibit 56 you are asked to appear for a hearing on Saturday, July 1, 1944. Was that why you were going over to the C.E.A. office, in response to Board's Exhibit 56?

A. That is right.

Q. Mr. Sokol and Mr. Weller were representing you and the other people that were to be defended at the hearing; is that right? [1021]

A. That is right.

Q. Will you relate the rest of the conversation that took place there?

A. Mr. Sokol asked Mr. Herntzinger if he was representing the association. He said no, he wasn't there in the capacity of representing the association; he was there in the capacity of informing the association.

The Board members agreed to give us time to prepare a defense. The conversation mostly was between Mr. Sokol and the members of the Board, and the business agents.

Mr. Ryan: Miss Reporter, will you please mark this document as Board's exhibit next in order, for identification.

(Testimony of Herbert L. Caffarel.)

(Thereupon, the document referred to was marked Board's Exhibit 57, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 57, for identification, a document entitled "Notice" and signed John A. Gibson and attached thereto is a four-page document which begins:

"To the Executive Board of the Cannon Employees' Association, Inc.:

"Members of the Cannon Employees' Association, Inc., do by these presents make the following charges and complaints against the following members of the Cannon Employees' Association, Inc., to-wit:

"Herbert Caffarel, Florence Maynard, Lee Lawhon, [1022] Rachel McBurnie, and Arnold Benson."

Mr. Cannon: I will stipulate the matter was heard. Subject to the other objection that it is hearsay, I have no objection to its going in.

Trial Examiner Batten: That is the same document as Board's Exhibit 49?

Mr. Ryan: With respect to one page. It refers particularly to this witness, Mr. Examiner. I offer it in evidence as Board's Exhibit 57, for identification. It contains one page of the other document.

Trial Examiner Batten: There being no objection, it will be received.

(Thereupon, the document heretofore marked Board's Exhibit No. 57, for identification, was received in evidence.)

(Testimony of Herbert L. Caffarel.)

Mr. Ryan: Will you stipulate further it was served on this witness?

Mr. Cannon: Yes.

Q. (By Mr. Ryan): Mr. Caffarel, pursuant to the receipt of this notice and complaint, which is Board's Exhibit 57, you received that after your July 1st meeting with the C.E.A. when your attorney asked for a bill of particulars and a delay?

A. That is right.

Q. Then on the 15th of July you were called in for a hearing; [1023] isn't that right?

A. Yes, at the Wednesday morning breakfast club.

Q. A trial took place before the Board of Directors of the C.E.A.?

A. Yes.

Q. You and Florence Maynard and Rachel McBurnie appeared there with your attorneys, David Sokol and Weller?

A. Yes. As to Arnold Benson, the charges had been dropped.

Q. The trial took place on two succeeding Saturdays beginning July 15, 1944; isn't that right?

A. Yes.

Q. How long did the trial last, Mr. Caffarel, each day?

A. The trial started about 12:00 o'clock the first Saturday and lasted until about five. And the second Saturday it started about the same time and it ended about, a little earlier, possibly about four or four-ten, somewheres around there.

Q. I ask you if at that time the members of the Board of Directors of the C.E.A. were Johnny Gibson, president,—

(Testimony of Herbert L. Caffarel.)

A. Johnny Gibson, president.

Q. —Harry Grady, vice-president—

A. That is right.

Q. And Al Tuttle, secretary?

A. That is right.

Q. Maynard O'Brien, treasurer? [1024]

A. That is right.

Q. Lou Finley, director? A. That is right.

Q. Jim Barton, director?

A. That is right.

Q. Don Schloeder?

A. That is right.

Q. And Richard Franklin was business manager; is that right? A. Yes.

Q. Were those persons all present at the trial during the two days you were there?

A. Yes, they were all there.

Q. The Board of Directors sat as the jury in the case? A. All except Johnny Gibson.

Trial Examiner Batten: When you say "all except Johnny Gibson," does that include Franklin?

The Witness: No, the Executive Board sat in as jurors. Franklin is not in an executive capacity. Franklin is the business agent. He is not in an executive capacity of the association, Executive Board. The Executive Board were the jurors.

Q. (By Mr. Ryan): You are talking about the Board of Directors of the C.E.A.?

A. That is right, all except Johnny Gibson. [1025]

(Testimony of Herbert L. Caffarel.)

Q. At that time, to your knowledge, how many of the persons named on that Board of Directors were working on the day shift?

A. Johnny Gibson, Harry Grady, Jimmy Barton, Maynard O'Brien, Al Tuttle, Don Schloeder, and Lou Finley was on the swing shift in the die cast.

* * * *

Q. (By Mr. Ryan): Now, at the conclusion of the trial or the hearing, did you receive any notification from anyone as to the verdict in regard to yourself and McBurnie and Maynard?

A. Well, after the Board members went into the chamber and then came back with the verdict it was read off by Mr. Grady.

Q. Right in the hearing room? [1026]

A. Right in the hearing room, that is right.

Q. At the end of the second day's session; is that right?

A. Yes. Florence Maynard was found guilty as charged—not by a majority. And Rachel McBurnie was exonerated. I was found guilty by the majority of the Board.

Q. You and Florence Maynard were found guilty? A. That is right.

Q. Thereafter, did you continue to work for the company for a period?

A. Yes, I worked for the company, I think, several weeks later.

Trial Examiner Batten: You say several weeks?

The Witness: Yes. In other words, I continued

(Testimony of Herbert L. Caffarel.)

in the employ of the company after the verdict of the members of the Board.

Q. (By Mr. Ryan): Well, the trial began on the 15th and ended a week later, the following Saturday, and you were discharged, weren't you, on the 29th? So you didn't work very long.

Anyway, in the time that you did work after the end of the trial, Mr. Caffarel, did you have a conversation with your foreman about the middle of the week following your trial?

A. Yes. Mr. Weber told me that the company had decided to let me go, he understood the company had decided to let me go. [1027] He was going to let me work until Saturday, to complete the week, so when Saturday came, about 11:30, I went up to him. I said, "Bob, how are the chances of checking in any tools and preparing anything while the whole force is here, before they go home."

He said, "That is all right."

I checked my tools in and everything. He said, "Take this slip, dismissal slip, and take it over to Mr. Hawkinson."

So I went in to see Mr. Hawkinson and he wasn't in the office. I started out toward Mr. Wilcox's office in the front building. I met Mr. Wilcox coming down the aisle toward Mr. Hawkinson's office.

We stopped and had a conversation. I told him what I wanted to see Mr. Hawkinson about. He said, "Let's go in the office here."

Q. What did you tell him you wanted to see him about? What did you say?

(Testimony of Herbert L. Caffarel.)

A. I said I wanted to see Mr. Hawkinson about my discharge, getting my check and a clearance, and availability slip.

Trial Examiner Batten: It is twelve o'clock. Have you completed your answer? Have you finished the conversation?

The Witness: No. We walked in to Mr. Hawkinson's office, and Mr. Wilcox informed me that according to Section VIII of the by-laws of the association, why, he had to abide [1028] by them and let me go, and that if I would come in the front office with him, he would give me all the discharge instruments. Then when we got there Florence Maynard was in Mr. Wilcox's office. So Mr. Wilcox was seated, and I sat down. She asked him for the same thing I did.

Q. (By Mr. Ryan): What did she say?

A. She said, "I want my availability slip and my check and everything."

Mr. Wilcox said, "I am certainly sorry to see you two people go." And then he gave us the check and what-not, and we left.

Then a week later I had to go back for another check, a bonus check that the leadman got in their respective position. I went back three or four days later and contacted Mr. Wilcox, and I got the check and left. And that is all. I haven't been back since. [1029]

Q. (By Mr. Ryan): Now, Mr. Caffarel, it has already been testified, I believe, that your job as

(Testimony of Herbert L. Caffarel.)

treasurer of the C.E.A. terminated about the latter part of 1943? There was a new election and you were defeated? A. Yes.

Q. I ask you if about several weeks before you were voted out of office, as it were, in the latter part of 1943—strike that question.

While you were on the Board of Directors in the C.E.A. a man named Lewis was attorney for the C.E.A., isn't that right?

A. Yes, that is right.

Q. He was removed from that job during the time you were on the Board of Directors; isn't that correct? [1030]

A. Yes, he was voted out by the Board members.

Q. Would you tell us approximately when it was that he was terminated as an attorney for the C.E.A.?

A. At a meeting of the association's office.

Q. A meeting?

A. Yes. The conversation was brought up by Richard Franklin.

Trial Examiner Batten: When was this?

The Witness: That was prior to the time of my defeat in 1943.

Q. (By Mr. Ryan): Well, we have established, I believe, that Franklin became business agent about March, 1943. With reference to that particular date, can you fix an approximate time?

A. A short time after that.

Q. After Franklin became business agent?

A. Yes.

(Testimony of Herbert L. Caffarel.)

Q. Within a few weeks?

A. That is right. Johnny Gibson and Franklin started the campaign to rid themselves of Joe—rid the association of Joe Lewis' services.

Q. You had a meeting, I take it, that is, the Board of Directors, to take up the question of removing this Lewis as attorney; isn't that right?

A. That is right. [1031]

Q. A few weeks before you had this meeting, to take up the question to oust him, did you have a conversation up in Jim Cannon's office, with Mr. Jim Cannon, relative to Joe Lewis?

A. I had a conversation with Mr. Cannon in his office some weeks prior to that. Mr. Cannon told me that he didn't approve of Mr. Lewis being the association's attorney because—that is, because the employees were paying him out of their wages, money for his services.

Mr. Cannon: Paying him for——

The Witness: In other words, paying money out of their salaries, their wages.

Q. (By Mr. Ryan): Lewis was being paid a retainer fee for so much a month?

A. That is right, \$100.00 a month.

Q. After you had that conversation with Mr. Cannon, have you related all you can remember of it, by the way?

A. Yes, that is about all I can remember of it.

Q. A few weeks later you had a Board of Directors' meeting. Where did the meeting take place?

A. It took place at the association's office.

(Testimony of Herbert L. Caffarel.)

Q. The Board of Directors were present; were they? A. Yes, they were present.

Q. Was a motion made on the question of Lewis?

A. Yes, a motion was made to oust Joe Lewis. And Johnny [1032] Gibson, Margaret Grady, Florence Maynard, also.

Q. I just want to know if the motion was made?

A. Yes, a motion was made by Johnny Gibson.

Q. Was a vote taken on that?

A. A vote was taken.

Q. What was the result with respect to the question of whether Lewis was to be retained or ousted?

A. Well, there was a concerted effort made by Johnny Gibson to remove Joe Lewis as the attorney.

Q. It was voted on, and what was the result?

A. The result was that five voted to oust him and two voted to retain him. Jim Nolan and myself voted to retain him.

Q. Did you vote to retain him because you wanted Lewis retained, you thought he was a good lawyer, I mean? Just why did you vote to retain him?

A. Yes, I thought he would be all right from having so much experience with the association previously; he had been connected with it. [1033]

* * * *

Cross-Examination

* * * *

Q. I want to get a few dates here clearly in mind. When was it you first became a member of the C.E.A. or the Cannon Employees' Recreation Association? First, you became a member of the

(Testimony of Herbert L. Caffarel.)

Cannon Employees' Recreation Association; didn't you? A. Yes, that is right.

Q. When was that? [1040]

A. That was the time that Ned Mandella was signing them up in the tool crib window.

Q. Approximately what date was that?

A. I don't know what date.

Q. January or February in 1941, Mr. Ryan reminded you as to the testimony of George on your direct examination. I think you said it was some time about January or February, 1941. I want to get the dates here.

A. I don't remember the date, but that is when it was.

Q. All right. Now, then, prior to that you had been approached by C.I.O., hadn't you?

A. No.

Q. You said that the Mandella talk with you came after the C.I.O. began their operations; is that correct?

A. That is right. The C.I.O. actually began that small operation in Plant No. 1 before we were transferred to Plant No. 2.

Q. The C.I.O. began its operations before Mandella ever approached you on the C.E.A. or the C.E.R.?

A. Yes, that is right.

Q. When was it that the C.I.O. asked you to become one of their solicitors?

A. Well, they asked me to join the C.I.O. on several occasions, many occasions.

(Testimony of Herbert L. Caffarel.)

Q. When was the first time? [1041]

A. The first time was after Mandella started his operations at the recreation club.

Q. Now, that is, the C.I.O. contacted you to assist them; is that right?

A. Well, no, not to assist them. They asked me to join the C.I.O.

Q. I am using your language you used this morning. You said you were asked by C.E.R.A. to assist them. "And I was also contacted by C.I.O., to assist them."

A. Well, what I mean by that is that if I would join the C.I.O., that I would be an assistant of them, like the opposition.

Q. I see. By using the words "assist C.I.O." you merely meant they asked you to join; is that right?

A. That is right, at the time.

Q. When was that they asked you to join?

A. Shortly after I joined the Cannon Employees Recreation Association.

Q. And that would be shortly after January or February, 1941?

A. That would be shortly after the inception of the Cannon Employees Recreation Association.

Q. All right. I say, would that be in January or February, 1941?

A. I can't fix the date definitely. [1042]

Q. Well, who contacted you for C.I.O.?

A. Several of them. Gus Palm.

Q. I want the first one.

A. Gus Palm was the first one.

(Testimony of Herbert L. Caffarel.)

Q. Where? A. In Department 2.

Q. During working hours?

A. During working hours.

Q. What did you tell him?

A. I told him that I didn't like the C.I.O.

Q. What else? Give me the rest of the conversation, what this man Palm said to you and what you said to him.

A. Well, he says, "Here, Doc, sign a card."

I said, "No, I don't like the C.I.O." I said, "I am satisfied with Ned Mandella."

He says, "Well," he says,—then he started to give me a talk about how good the C.I.O. was, and everything else. [1043]

Q. Tell me what he said.

A. He said, "If you join the C.I.O. you get protection." It wasn't much of a conversation. Then I waved my hand and walked away.

Q. He said you would get, among other things, protection? A. Yes, that is right.

Q. Did he say protection from what?

A. He said labor protection.

Q. What else did he say?

A. That is all I can remember.

Q. Where were you standing when that conversation was had? A. In Department 2.

Q. That is where you were working?

A. That is right.

Q. At your machine? A. That is right.

Q. Where was this man Palm standing?

A. There was activity in the department, when

(Testimony of Herbert L. Caffarel.)

you work, you change positions. You don't stay in the same position.

Q. It was during the shift; was it?

A. That is right.

Q. Who next contacted you for C.I.O.?

A. I had quite a few of them to try to talk me into the C.I.O.

Q. Give me the next one you remember. [1044]

A. Cliff St. Clair tried many times.

Q. Many times?

A. He was right next to me on the milling machine.

Q. Was it during his operations he was talking to you about it? A. Yes, that is right.

Q. And during your operations, too?

A. Yes.

Q. During your shift time?

A. That is right.

Q. Give me any conversation you can remember you had with this fellow Cliff St. Clair?

A. I can't remember that conversation.

Q. Can't you give me anything about it?

A. Just the same line of talk. I can't relate word for word.

Q. I know you can't do that. You remember he wanted you to sign a card for the C.I.O.; is that right? A. Yes.

Q. He told you you would get labor protection?

A. That is right.

Q. Was there anything else he told you about the advantages of the C.I.O.?

(Testimony of Herbert L. Caffarel.)

A. I don't remeber.

Q. Who was the next man or another man you talked to that [1045] contacted you on C.I.O.?

A. I can't remember the names.

Q. You said you were contacted by a number of men. Are those the only two you can remember?

A. Yes.

Q. Now, over how long a period were these solicitations made of you to join the C.I.O.?

A. Periodically.

Q. Over how long a period?

A. Up until the time of the first election.

Q. Up until September 9, 1941? A. Yes.

Q. All right. Now, after September 9, 1941, who, if anyone, contacted you about joining the C.I.O.?

A. No one.

Q. No one at all? A. No.

Q. How is that?

A. You mean after September 9, 1941?

Q. Yes. A. That was after the election.

Q. I know it. Didn't anybody contact you between the first election and the second election about joining the C.I.O.?

A. Between the first election between C.I.O. and V.E.A. [1046] and the second election between the C.I.O. and C.E.A.?

Q. Yes. A. No, I don't think so.

Q. Let me see if I can refresh your recollection about that. You say this fellow Franklin became kind of a publicity man for the C.E.A.; is that right?

A. Yes.

(Testimony of Herbert L. Caffarel.)

Q. Franklin wrote a lot of the literature in connection with that campaign between C.E.A. and C.I.O., on the second election; didn't he?

A. That is right.

Q. So you have that period quite definitely in mind now, do you? You have in mind, do you, that period when that campaign was going on?

A. Yes. It was in December, 1942.

Q. And part of November, wasn't it, in 1942?

Mr. Ryan: What was in 1942?

Mr. Cannon: The campaign.

The Witness: The election was in 1943, January.

Q. (By Mr. Cannon): I am coming to that. The campaign for the election ran in November?

A. Sometime up to the time of the election.

Q. During that period did anybody ask you about joining the C.I.O.?

A. No, I don't think so.

Q. Did you see anybody around the plant or in the plant soliciting for members for the C.I.O.?

Mr. Ryan: I am going to ask for the time and place.

Mr. Cannon: If he tells me he did or didn't I will tie him down.

Q. (By Mr. Cannon): Did you at any time?

A. Did I notice the C.I.O. organizing in the plant?

Q. Yes. Before the election?

A. Well, there was the same amount of activity there was in the prior election.

Q. There was the same amount of activity?

(Testimony of Herbert L. Caffarel.)

A. Yes, on both unions.

Q. Both unions were in there on company time soliciting members, weren't they, prior to the second election?

A. As the Trial Examiner stated before, there is no use kidding ourselves.

Q. I know, but that is true, isn't it? You remember that?

A. Yes, that is true; sure, both of them.

Q. Mr. Cafferel, did you think when you were appointed or elected on that grievance committee that the election under which you were elected to the grievance committee was a fair election? [1048]

* * * *

Q. In any event, after Mr. Franklin became the publicity man in November or December, 1942, you were a member of the Board of Directors of the C.E.A. clear up to the time when he was voted in as the business agent in March, 1943; weren't [1061] you? A. That is right.

Q. What office did you hold with the C.E.A. during that period?

A. When he was voted in as business agent?

Q. No. Between November, 1942 and March, 1943, what office did you hold?

A. Presidency.

Q. You then were acquainted with the publicity Mr. Franklin was getting out at that time; weren't you? A. With the leaflet, yes sir.

Q. You had read them all; hadn't you?

A. That is right.

(Testimony of Herbert L. Caffarel.)

Q. And approved them? A. That is right.

Q. Now, tell me what it was that first made you adverse to Mr. Franklin.

A. Well, Florence Maynard was the president at the time he became editor of this paper, and I was the treasurer.

Q. Just a minute, now. Then you did become, you were still friendly with him until you were defeated, is that right, for president?

A. Yes, that is right.

Q. Go ahead.

A. Oh, I didn't particularly like the line of attack in [1062] this paper.

Q. Tell me in what particular.

A. Well, I can't just exactly tell you. Things I could see that I just can't explain at the time.

Q. How did it differ from the line of attack he used prior to March?

A. This is the main reason why I became adverse to his method:—not necessarily adverse to him, but his method—he would control the Association through the News. [1063]

* * * *

(Thereupon, the document referred to was marked as Respondent's Exhibit 2, for identification.) [1067]

Mr. Cannon: I will hand this document to counsel, marked Respondent's Exhibit No. 2 for identification.

Q. (By Mr. Cannon): I ask you if you are

(Testimony of Herbert L. Caffarel.)

acquainted with the signature of Florence Maynard on there, as president? It being dated June 9, 1943.

A. I don't remember this at all.

Q. Is that her signature (indicating)?

A. That seems to be, yes.

Q. Is that the signature of John A. Gibson (indicating)?

A. Yes, it looks like it is.

Q. Let me see if I can refresh your recollection from it. By the way, you were a member of the board of directors at that time, weren't you, on June 9, 1943? A. I think I was.

Q. Now, reading this: "This is to inform you that the Cannon Employees' Association has fairly tried the following named persons for various infractions of our by-laws, found them guilty, and duly expelled them from membership in this organization: Louis Tournie, Vivian Sullivan, Monna M. Nye, Joan Lawrence, Donald M. McClellan, William Youngberg and Erma A. Evenstead. As an additional cause for action these persons were also expelled for non-payment of dues along with Ada Lish, Eloise Hunt and Bernard Mackey." Do you remember that?

A. No, I don't remember that. I am under the impression [1068] that the grievance committee of the Association discharged those people. I really don't remember of that at all.

Mr. Cannon: I see. I will offer it in evidence.

Mr. Ryan: No objection.

Trial Examiner Batten: It will be received.

(Testimony of Herbert L. Caffarel.)

(Thereupon, the document heretofore marked as Respondents' Exhibit 2, for identification, was received in evidence.) [1069]

[Printer's Note]: Respondents' Exhibit No. 2 is set out in full at page 707 of this printed Record.

* * * *

Q. (By Mr. Cannon): I want to get this again. You were a director, you were first elected a director of Cannon Employees Recreation Association or Cannon Employees' Association? When were you first elected to the board of directors?

A. That was in the latter part of 1942.

Q. That is when you first became a director?

A. That is right.

Q. How long did you continue as a director?

A. I continued as director until 1943.

Q. What time?

A. In the latter part of the year, I believe.

Q. During the whole of that time you were an officer, too, besides a director? A. Yes.

Q. You were either president or treasurer?

A. Treasurer. [1070]

* * * *

Q. In every instance I think you mentioned, when you left to go to do your banking or the C.E.A. offices, you would always speak to your foreman when you left; wouldn't you?

A. Yes, I always told him when I was going.

Q. Do you remember an occasion or two when the foreman raised some fuss about going so often?

(Testimony of Herbert L. Caffarel.)

A. No, I don't. [1076]

* * * *

Q. When you had gone out of the plant you testified this morning, while you were a director or officer of this Cannon Employees' Association, did you on all of those occasions feel it was necessary to do that to carry on the business of the Association? A. Going to the bank? Yes.

Q. And the other times you left there and went to the Association's office? A. Yes.

Q. In other words, you never did go out of there and wander around on your own personal business; did you?

A. No, not that I know of. [1077]

* * * *

Redirect Examination

* * * *

Mr. Ryan: Miss Reporter, will you please mark these documents as Board's exhibits next in order for identification?

(Thereupon, the documents referred to were marked as Board's Exhibits 58 and 59, for identification.)

Mr. Ryan: I have had marked for identification Board's Exhibits 58 and 59 for identification, two documents. Board's Exhibit 58 is entitled "To My Fellow Employees," and purports to bear the signature of Florence K. Maynard.

Board's Exhibit 59——

Mr. Cannon: Is there a date on that?

Mr. Ryan: There is no date on the document.

(Testimony of Herbert L. Caffarel.)

It refers to the fact, and I quote, "Saturday, July 1, 1944 I am to be tried in the manner required by the C.E.A. by-laws. I am accused of the following offense:"

Board's Exhibit 59 is entitled "Special C.E.A. Bulletin, from the board of directors." Across the bottom are the words, "We have just begun to fight." [1080]

Trial Examiner Batten: Is there a date on that latter one, Mr. Ryan?

Mr. Ryan: The latter one, likewise, does not bear a date, but the subject matter would indicate the time it was put out in relation to the testimony of this witness.

Q. (By Mr. Ryan): I show you Board's Exhibit 59, Mr. Caffarel, for identification, and ask you if you know whether or not Florence Maynard caused that to be published? A. Yes.

Q. Where did you see it, first?

A. Well, I went to the plant—

Mr. Cannon: I can't hear you.

The Witness: The morning I went to work I immediately heard that she had posted something on the board that previous evening. I asked her about it. That is, when she came to work. She said yes.

I said, "I would like to see it."

She said, "I will give you a copy of it," so she gave me a copy.

Q. (By Mr. Ryan): This is the copy she gave you? A. This is the copy she gave me.

(Testimony of Herbert L. Caffarel.)

Q. I ask if that was within a few days after she received the letter from Mr. John Gibson of the C.E.A., which was dated the 29th of June, which is in evidence as Board's Exhibit 56, notifying you you would be tried on July 1st? [1081]

A. Yes, that was immediately after.

Q. After you got this letter of June 29th?

A. That is right.

Q. I believe you testified she also got a letter identical with that letter of June 29th?

A. Yes.

Q. Now, I show you Board's Exhibit 59, Mr. Caffarel, and ask you if you have seen that before.

A. Yes.

Q. Where did you see it first?

A. I saw that at the gate.

Trial Examiner Batten: At the gate, you say?

The Witness: Yes, outside the plant.

Q. (By Mr. Ryan): Was it being distributed to the employees? A. Yes, it was.

Q. Copies such as that (indicating)?

A. Yes, such copies as that were being distributed as leaflets.

Q. Was that in connection with the matters that you and Florence Maynard were involved in, that led up to this trial of July 15, 1944?

A. Yes.

Q. It was being distributed there by representatives of the C.E.A.?

A. Of the C.E.A., that is right. [1082]

(Testimony of Herbert L. Caffarel.)

Mr. Cannon: About what date would that be, Mr. Ryan?

Mr. Ryan: It would be just prior to July 15th, some time prior to July 15, 1944.

Mr. Cannon: Thank you.

Q. (By Mr. Ryan): Is that right?

A. That is right, yes.

Mr. Ryan: I offer Board's Exhibits 58 and 59 in evidence.

Mr. Cannon: No objection.

Trial Examiner Batten: They will be received.

(Thereupon, the documents heretofore marked as Board's Exhibits 58 and 59, for identification, were received in evidence.)

[Printer's Note]: Board's Exhibit No. 58 is set out in full at page 702 of this printed Record.

Mr. Ryan: I have no further questions.

Recross Examination

Q. (By Mr. Cannon): Calling your attention to this Board's Exhibit 58, where Florence Maynard says, "To me, personally, the loss of my job here at Cannon's would not be a hardship, since I had, before receipt of this letter, tendered my resignation to the company for other reasons."

You knew she had already resigned then; didn't you?

A. No, I didn't know anything about that. I didn't know what she had in mind when she wrote it.

Q. She told you she wrote this herself?

A. Yes. [1083]

Q. That is one of those dischargee cases. By the way, did she tell you what the other reasons were she spoke of? A. No.

Mr. Ryan: Does the company have that letter?

Mr. Cannon: We don't have it. This is new to me. I have a mass of stuff I am going to try to dig out over the week end.

Mr. Ryan: I have no further questions, other than to ask the company to produce her letter.

Trial Examiner Batten: I think Mr. Cannon is going to search and see if it can be found.

Mr. Cannon: I will ask them to do so down at the plant. [1084]

* * * *

Mr. Cannon: I have no other questions. If we have a [1085] letter referred to in Board's Exhibit 58 about where she had already resigned we will produce it if we can. [1086]

* * * *

JOHN ALBERT GIBSON,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): Will you state your full name, please, Mr. Gibson?

A. John Albert Gibson.

Q. What is your address?

A. 3328 Hamilton Way.

Q. Here in Los Angeles? A. Yes.

Q. Mr. Gibson, were you ever employed by

(Testimony of John Albert Gibson.)

Cannon Manufacturing Corporation? Have you been employed by that company? [1091]

A. Yes.

Q. You are now employed; is that right?

A. That is right.

Q. When did you begin your employment with that company, approximately?

A. March 10, 1941.

Q. What is your capacity now?

A. Electrician.

Q. About how long have you held that job, that same job? A. Electrician?

Q. Yes.

A. Oh, approximately three years.

Trial Examiner Batten: Are you assigned to maintenance work?

The Witness: That is right, yes, sir.

Q. (By Mr. Ryan): Mr. Gibson, you have been an officer and member of the board of directors of the Cannon Employees' Association?

A. Yes.

Q. When did you first become a member of the Board of Directors of the C.E.A., as best you can recall?

A. I don't recall the exact date. I believe it was in the early part of '42.

Mr. Cannon: Is this a director, you say?

Mr. Ryan: I say a member of the board of directors. [1092]

The Witness: Yes, I believe it was in the early part of '42.

(Testimony of John Albert Gibson.)

Q. (By Mr. Ryan): In addition to becoming a member of the board of directors then, did you hold an office, also? A. Yes.

Q. What was the office? A. President.

Q. President of the C.E.A.? A. Yes.

Q. How long did you continue to be president?

A. Approximately a year and a half.

Q. Did I understand you to say it was about 1942 that you became president?

A. No. That is when I became a board member.

Q. But you became president in 1944; isn't that right? A. That is right.

Q. About the beginning of 1944? A. Yes.

Q. By the way, how many elections were held during the time that you were—beginning with the first election that you participated in to get to be a member of the board of directors of the C.E.A., up to just recently? How many elections were held, approximately, for the various positions on this C.E.A.? [1093]

* * * *

The Witness: Well, we had an election early in '43. We had an election in '44—no. Then we had another election in '44—no. Then we had another election in about March of '43.

Q. (By Mr. Ryan): Then you also had an election about the middle of 1944; did you?

A. That is right.

Q. About July, 1944?

A. Yes, that is right.

(Testimony of John Albert Gibson.)

Q. Were all those elections, to your knowledge, held in the cafeteria?

A. That is right, as specified in our contract.

Q. What other office have you held, Mr. Gibson, besides the office of president?

A. I was secretary previous to that. [1094]

* * * *

Q. Mr. Gibson, while you were on the board of directors I ask you if you had an arrangement with the company which allowed you to take time off from work during working hours for a certain amount of time each day that you found it necessary to take care of Association affairs, without losing your wages?

A. Well, the reason that came about the company objected very strenuously to officials of the Association running around, supposedly on union activity. They insisted it could be confined to one man, namely, the chairman of the board of directors, which was myself. So we worked it out with Mr. Hawkinson, that I should be allowed so much time each day; not to be taken unless it was of an absolute necessity, for union business [1097]

Trial Examiner Batten: How much time was that?

The Witness: It wasn't to run over two hours in any one day.

Trial Examiner Batten: If it was necessary.

The Witness: That is right.

Q. (By Mr. Ryan): When was that arrangement made, approximately?

(Testimony of John Albert Gibson.)

A. I can't recall offhand. I imagine about the latter part of '44.

Q. Thereafter, after the arrangement was made, did you have occasion to go off on business for the Association on occasions during your working hours? A. That is right.

Q. On an average of about how often would that happen in a week, would you say, on an average.

A. Oh, I would say some weeks it would probably happen four or five days out of the week.

Q. Now, on those occasions, Mr. Gibson, would you check out when you left the plant? I mean clock out? A. No.

Q. After you would take care of your business, would you return to the job?

A. Yes, I returned to the job. You had to get your foreman's permission before you were allowed to leave the plant.

Q. You would do that and leave the plant on Association [1098] business?

A. That is right.

Q. When you returned to the plant you would return to your job then? A. Yes.

Q. In the department? A. Yes.

Q. Did you ever receive any deductions from wages for that time spent away?

A. Yes, there were occasions we spent away from the plant——

Q. I mean this particular arrangement of you personally, when you would go away on this Association business.

(Testimony of John Albert Gibson.)

A. No, that was stipulated in our contract, too, we should be allowed a little time to take care of the Association business during working hours.

Q. Pursuant to that, did you and other directors take time off from work for Association business, without losing wages?

A. We have on occasions, that is right.

Q. Has that continued right up until recently? I mean by recently up until about two months ago?

A. It continued up until the time the Association was disestablished.

Q. About when was that?

A. I can't recall the exact date on it. [1099]

Q. The approximate time, Mr. Gibson.

A. It was sometime in April.

Q. In this year? A. Yes.

Q. You took some steps to disestablish the Association? A. That is right.

Trial Examiner Batten: Did the respondents take any steps at the time of the disestablishment? Did the companies do anything?

The Witness: It was voted on by the members.

Trial Examiner Batten: I am not talking about the Association. I am asking did the company take any steps that you know of.

The Witness: No; I don't personally think it was any of their business.

Trial Examiner Batten: I asked whether the company did take any steps of any kind, that you know of.

The Witness: No.

(Testimony of John Albert Gibson.)

Mr. Cannon: You mean the Cannon Manufacturing and Cannon Electric?

Trial Examiner Batten: That is right.

Mr. Cannon: I wanted to be sure he knew what you were talking about.

Trial Examiner Batten: I thought you understood when I said respondents and companies that I meant the Cannon [1100] Electric Development Company and Cannon Manufacturing Corporation.

The Witness: Yes.

Q. (By Mr. Ryan): Mr. Gibson, I show you Board's Exhibit 29. Is this the contract between the company and the C.E.A.?

A. That is right.

Q. In that contract is a provision relative to directors, board of directors taking time off for Association business; is that right?

Mr. Cannon: Page 12.

Q. (By Mr. Ryan): Is that page 12?

A. Yes.

Q. That is Section X on page 12.

A. (Reading): "The company agrees that any member of the board of directors and the Association business representatives shall upon approval of the management have the privilege of appearing on or leaving company property during working hours when such appearance is necessary to carry on the business of the Association."

Q. Pursuant to that, the board of directors did, from time to time, take time off without loss of pay?

A. That is right.

(Testimony of John Albert Gibson.)

Q. I believe there is a paragraph of that contract also relative to the provision of bulletin boards for the C.E.A.'s use. The management was to provide bulletin boards? [1101]

A. That is right.

Q. Did they provide bulletin boards pursuant to that provision? A. Yes.

Q. Were the bulletin boards located at the plant, at various places in the plant? A. Yes.

Q. Mr. Gibson, while you were an officer of the C.E.A., did the C.E.A. sponsor social affairs from time to time? A. Yes.

Q. In addition to the existence of the Cannon Employees' Association in the plant, at least since 1942, there has been an organization known as Cannon Recreation Club; isn't that right.

A. That is right.

Q. Now, from time to time have social affairs been jointly sponsored by the C.E.A. and the Cannon Recreation Club?

A. Yes. The reason for that was it was the wish of the members we have dances more often than what we had been having in the past. And we felt the Association couldn't afford it on its own. On the help of the Recreation Club we gave it to them practically monthly.

Q. That would mean that prior to 1942 you hadn't been having affairs as frequently as since then. A. That is right. [1102]

Q. Since 1942, up to the time you say you dissolved the C.E.A., did you continue to cooperate

(Testimony of John Albert Gibson.)

with the Recreation Club in the sponsoring of social affairs and dances? A. Yes.

Q. In addition to monthly dances, what other social affairs would you have?

Mr. Cannon: What is it?

Mr. Ryan: What other social affairs would they have.

The Witness: We had our picnics.

Q. (By Mr. Ryan): July 4th picnics?

A. Yes. We had our baseball games.

Q. Did you stage a carnival on occasions?

A. Yes, that was similar to a picnic, though.

Q. What was the arrangement between the C.E.A. and the Recreation Club as to the handling of the expenses?

A. Each one would keep track of the amount of money they spent, and after the affair was over, they would figure up how much each party owed.

Q. Was the expense let on proportionate basis?

A. 50-50.

Q. 50-50? A. Yes.

Q. During the time that you were an officer of the Association, who was the head of this Cannon Recreation Club? A. Cal Cannon. [1103]

Q. Cal Cannon? A. Yes.

Q. I understand that he is not now head of that club; is that right?

A. No, he is no longer in charge of the cafeteria.

Q. Approximately when did he leave that job?

A. We had numerous complaints from the em-

(Testimony of John Albert Gibson.)

ployees in the plant about the situation in the cafeteria——

Q. Mr. Gibson, I am not interested particularly in the qualifications of Cal Cannon.

A. You asked me when he left. I was going to tell you what led up to his leaving.

Trial Examiner Batten: The question is: When did he leave?

The Witness: I don't know the approximate date; I don't recall.

Q. (By Mr. Ryan): Would you say it was about six months ago or three months ago or two months ago?

A. It was over six months ago.

Trial Examiner Batten: You jointly sponsored some of these affairs? I want to see if I understand you correctly. You each would bear part of the expense; is that correct?

The Witness: That is right.

Trial Examiner Batten: Then when the affair was over, out of the proceeds of that affair, if there were any, you [1104] would each take first the amount each had spent.

The Witness: That is right.

Trial Examiner Batten: If there was any profit, how was that divided? How was that divided, 50-50?

The Witness: There was no profit in that. They were given strictly for the employees.

Trial Examiner Batten: Wasn't there any in the carnival?

(Testimony of John Albert Gibson.)

The Witness: No, it was a carnival of fun, not a game you participated in.

Trial Examiner Batten: Did you put the money in 50-50, or how?

The Witness: On occasions if we hired the hall, we paid for the hall. If we hired the orchestra, we paid for the orchestra. If it came out we had put out more than we had, they, in turn reimbursed us. If they paid out more than we did, we reimbursed them.

Trial Examiner Batten: In other words, when the thing was finally checked up, you each paid half the cost; is that right?

The Witness: That is right. [1105]

* * * *

Mr. Ryan: Mr. Examiner, I have no further witnesses, with the exception, of course, if this man who has just left the stand finds something I will put him back on possibly.

I now have a few more exhibits which I believe counsel will stipulate to, which I have had already marked.

Board's Exhibit 62-A for identification is a copy of a letter from Carl Brant, field organizer, to James H. Cannon, Cannon Electric Development and Cannon Manufacturing Corporation, 3209 Humboldt Street, Los Angeles, California;

Board's Exhibit 62-B for identification is the reply to that letter from James H. Cannon, under date of May 26, 1941.

I ask counsel to stipulate that Board's Exhibit

62-A is a copy of a letter received by Mr. James H. Cannon.

Mr. Cannon: I am sure it is.

Mr. Ryan: From the party named? And that Board's Exhibit 62-B for identification is Mr. Cannon's reply thereto.

Mr. Cannon: So stipulated.

Mr. Ryan: I offer Board's Exhibits 62-A and 62-B in [1200] evidence.

Trial Examiner Batten: They will be received.

(The documents heretofore marked as Board's Exhibits Nos. 62-A and 62-B, for identification, were received in evidence.)

[Printer's Note]: Board's Exhibits Nos. 62-A and 62-B are set out in full at pages 704-705 of this printed Record.

* * * *

[1201]

Trial Examiner Batten: I think we are ready to proceed. Mr. Ryan, have you looked up those matters in connection with those "R" proceedings?

Mr. Ryan: Yes, I have the formal papers on one of them, and the only formal papers in the first "R" proceeding as a result of the first election that I can find in the file was the petition——

Mr. Cannon: Pardon me, what is the number of that, Mr. Ryan—R-1354?

Mr. Ryan: Yes, that is the original one, I believe, and the second——

Trial Examiner Batten: Well, in that first one weren't there objections filed?

Mr. Ryan: If there were, I don't know what

happened to them, because the file didn't contain them.

Trial Examiner Batten: Does the file indicate that objections were filed?

Mr. Ryan: It indicates to the extent that there is an order dismissing protest of the conduct of election, but the objections are not in the file. They must have been removed for some reason or another. The file doesn't indicate what happened, whether they were sent to Washington or what. The other file is quite complete on the second election.

Trial Examiner Batten: I think we probably better have [1209] marked what you have there so that matter will be cleared up.

Mr. Ryan: In connection with the first case, the petition was the only thing I could find, the original petition which I brought.

Mr. Cannon: It is the petition for what?

Mr. Ryan: It is the petition for investigation and certification of representatives pursuant to Section 9 (C) of the National Labor Relations Act, before the first election, filed by the C. E. A.

Mr. Cannon: Do you have the Order dismissing protest of the conduct of election October 17, 1941?

Trial Examiner Batten: Let's see, 67-A will be the petition and the order dismissing protest of the conduct of election will be 67-B. The petition will be 67-A and the order 67-B.

Mr. Cannon: How do we get into those objections? Could that be done by reference and then it could be supplied by record from Washington or wherever they are.

Trial Examiner Batten: If they are not in the file here, I don't know. How about the consent election agreement?

Mr. Ryan: That is already in there. If we find them before the end of the hearing, we will put them in evidence.

Trial Examiner Batten: I wish you would continue to look for the objections because it is really what we should have, and if we don't find them here I wish you would make [1210] some search for them in the Washington file.

Mr. Ryan: Miss Reporter, reserving 67-A for the petition, will you please mark this document I hand you as 67-B for identification.

(The documents referred to were marked as Board's Exhibits 67-A and 67-B; Board's Exhibit 67-A being reserved, and Board's Exhibit 67-B for identification.)

Mr. Cannon: Board's Exhibit 67-A will be the petition for election?

Mr. Ryan: Yes.

Mr. Cannon: Board's Exhibit 67-B is the order dismissing protest of the conduct of election?

Mr. Ryan: Yes. It is signed by William R. Walsh and is dated October 17, 1941.

Miss Reporter, will you please mark this document as Board's Exhibit 68-A for identification?

(The document referred to was marked as Board's Exhibit 68-A, for identification.)

Trial Examiner Batten: What is the number of the second case?

Mr. Ryan: The second case is No. 21-R-1804, but the Board gives it a different number. The formal papers, some of them are marked with the Board's number 4601.

Mr. Cannon: That is 4601?

Mr. Ryan: That is the Board's number in Washington.

Miss Reporter, will you please mark these documents as [1211] Board's Exhibits next in order?

(The documents referred to were marked as Board's Exhibits Nos. 68-B through 68-P, inclusive, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit 68-A for identification the petition for investigation and certification of representatives pursuant to Section 9 (C) of the National Labor Relations Act filed in Case No. 21-R-1804 on September 21, 1942.

Mr. Cannon: Just a minute, I don't know how I am going to keep track of them. That is File No. 921942?

Mr. Ryan: That's right.

Mr. Cannon: What exhibit is that?

Trial Examiner Batten: 68-A.

Mr. Ryan: As Board's Exhibit 68-B, I have had marked what purports to be a copy of a telegram to Cannon Manufacturing Corporation and Cannon Electric Development Company from the United Electrical, Radio and Machine Workers, Local 1421,

C.I.O., dated September 21, 1942, notifying them that the union has filed a petition.

Mr. Cannon: That's right. That is the one starting out with "We again serve notice that we represent a majority of your employees—"

Mr. Ryan: Yes. As Board's Exhibit 68-C we have a letter addressed to the National Labor Relations Board, [1212] Twenty-First Region, attention of Mr. George A. Yager, field examiner, dated September 26, 1942, from H. F. Brady, operations manager, on the letterhead of Cannon Manufacturing Corporation, and it starts out with "In reply to your letter of September 22, we submit the following:"

Board's Exhibit 68-D is the notice of hearing which was issued by the Acting Regional Director on the 18th day of November, 1942, in this case No. 21-R-1814.

Board's Exhibit 68-E is the decision and direction of election by the Board issued in this matter and the Board's number for that case is Case No. R-4601. The decision was issued on the 31st day of December, 1942.

Mr. Cannon: Pardon me just a minute, I just want to keep these together, if I can.

Mr. Ryan: Board's Exhibit 68-F is a document entitled "Motion to Amend Title of Petitioner in Case No. R-4601" filed January 11, 1943.

Board's Exhibit 68-G is a document entitled, "Affidavit in Opposition of Motion to Amend Title of Petitioner, United Electrical, Radio and Machine

Workers of America, Local 1421, C.I.O., "signed by Bill Attaway on behalf of the Cannon Employees' Association on January 12, 1943.

Mr. Ryan: January 12, 1943.

Board's Exhibit 68-H is a document entitled "Amendment to Decision and Direction of Election issued by the Board at [1213] Washington, D. C., on the 16th day of January, 1943.

Board's Exhibit 68-I is a document entitled "Petition to Review Action of the Regional Director for the Twenty-First Region" and is filed by the Cannon Employees' Association in this matter on January 20, 1943, with the Board. It has to do with the setting up of the election, I believe.

Mr. Cannon: May I have just a moment to look at that?

Mr. Ryan: Yes.

Mr. Cannon: Petition for what?

Mr. Ryan: That is the petition to review action of the Regional Director for the Twenty-First Region.

Mr. Cannon: Thank you.

Mr. Ryan: And it is Exhibit 68-I for identification, and it apparently was received by the Board on January 20, 1943.

Board's Exhibit 68-J for identification is a document entitled "Answer to Petition to Review of the Regional Director for the Twenty-First Region,

which document was filed by the C.I.O. in this case and was received by this office on January 22, 1943.

Board's Exhibit 68-K for identification is a document entitled "Certification of Counting and Tabulating of Ballots dated January 25, 1943."

Mr. Cannon: May I have that just a moment, Mr. Ryan?

Mr. Ryan: Yes. [1214]

Mr. Cannon: Certification of counting and tabulation of ballots, dated January 25, 1943. Thank you.

Mr. Ryan: Board's Exhibit 68-L for identification is a document entitled "Report on Ordered Election in this Matter," and is dated at Los Angeles, this 25th day of January, 1943, and signed by E. J. Eagen, Regional Director of the National Labor Relations Board, by George A. Yages, field examiner.

Board's Exhibit 68-M is a document entitled "Objections to Conduct of Election" filed by the Cannon Electric Local 1013, that is the United Electrical Radio and Machine Workers of America, C.I.O., and was received on February 2, 1943.

Board's Exhibit 68-N for identification is a document entitled "Report on Objections to Conduct of Election" from E. J. Eagen, Director, National Labor Relations Board, Twenty-First Region, dated March 18, 1943.

Mr. Cannon: Let me get that again—report on what?

Mr. Ryan: On objections to conduct of election.

Board's Exhibit 68-O for identification is a document entitled "Supplemental Report on Objections to Conduct of Election," signed by E. J. Eagen, Regional Director, National Labor Relations Board, Twenty-First Region, dated April 6, 1943.

Board's Exhibit 68-P for identification is a document entitled "Supplemental Decision and Certification of Representatives," issued by the Board in Washington, D. C. this 4th [1215] day of April, 1943.

* * * *

Mr. Ryan: I will ask counsel to stipulate that the papers I have marked are formal papers in connection with the Case No. R-4601, which is the Board number case, the Regional number was R-1804, which refers to the same case.

Mr. Cannon: I have no objection. I was only wondering if it were part of the same proceeding. So as to keep everything in order, I will want to offer as my response certain additional papers bearing on that matter.

Trial Examiner Batten: I would say that you may do so as soon as you dispose of these.

Mr. Cannon: Maybe I can do it better after recess. I will assemble them together.

Trial Examiner Batten: Board's Exhibits 68-A through [1216] Board's Exhibits 68-P will be received in evidence, being the formal papers in Case

No. R-4601. Board's Exhibit 67-B will be received, and how about 68-A?

Mr. Ryan: As I stated, the copies of that are being typed now and are in the pool.

(Thereupon, the documents heretofore marked as Board's Exhibits Nos. 67-B and 68-A through 68-P, for identification, were received in evidence.)

* * * *

FRANK G. HOBART,

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Cannon): Mr. Hobart, you are employed by whom?

A. Cannon Electric Development Company.

Q. And what is your job down there?

A. Director of employee relations.

Q. And do you also handle the publication of the Cannoneer?

A. Yes, I handle all publications.

Q. And what is the Cannoneer?

A. The Cannoneer is the general term that is applied to the internal house magazine.

Q. Published how often?

A. Published monthly.

Q. And do you know when it began, approximately? A. Approximately January, 1941.

Q. Now, have you been the editor in chief or in charge of that publication since it began?

A. Yes.

(Testimony of Frank G. Hobart.)

Q. Up to the present time? A. Yes.

Q. Do you know a young lady by the name of Elsie Monjar? A. Yes.

Q. Elsie Monjar? A. Elsie Monjar, yes.

Q. Was she formerly a contributor or on the staff of contributors of the Cannoneer?

A. Yes.

Q. She has testified, Mr. Hobart, in this case concerning conversation had with you sometime in 1941, concerning her being removed from the staff of contributors to the Cannoneer. Will you please state whether or not you remember having such a conversation with her? A. Yes, I do.

Q. Now, tell us first about when it occurred?

A. Well, it was in the latter part of 1941.

Q. All right. Where? A. In my office.

Q. At the Cannon plant? A. Yes.

Q. And who was present besides yourself and Miss Monjar? [1222] A. No one.

Q. Just state what the conversation was as near as you can recall.

A. In general? It is a little bit, sometime ago, but my recollection of it is this: I told her that I didn't like to have any reporters working for other publications which were circulated in the plant, for the reason that when they would have any articles that they might pick up or any features they might get ahold of for publication, they would have to decide whether they would like to give it to the Cannoneer or possibly some other publication, and

(Testimony of Frank G. Hobart.)

I had no other reporters connected with any other papers?

Q. Did you so tell her?

A. Yes, I did so tell her.

Q. At that time did you know that she was a writer or one of the correspondents for this U.E. Magazine?

A. That's right.

Q. Well, now, did you make any statement to her that she would either have to resign from the Cannoneer staff or resign from the U.E. staff?

A. Well, I think I put it this way: That I didn't like to keep her on the "Cannoneer" if she felt that she would have to write for the other paper circulated about the plant.

Q. As a matter of fact, what has been your experience as a newspaper man in the past? [1223]

A. I was started in high school as a newspaper reporter, and I took a college course with the idea of making that my work. I later worked on a number of papers in Texas and also Los Angeles. I was city editor and news editor of the Los Angeles Record. [1224]

* * * *

Q. (By Mr. Cannon): In this conversation that you had with [1225] Miss Monjar, Mr. Hobart, were you following a different or the same custom that was followed by you in your representation of other papers, in asking that writers on one staff may not write for competitive papers?

A. That was the same policy.

* * * *

Q. Was anything else said about giving Miss

(Testimony of Frank G. Hobart.)

Monjar the choice of writing on one or the other paper?

A. I think that covers the situation exactly. I gave her the choice. The explanation was that I didn't think that she could represent both papers, not necessarily because of the fact it was a C.I.O. paper, but I had no reporters that were writing for the C.E.A. Bulletin. She was the only one of all the 30 or 35 reporters or staff members who was writing for another paper.

Q. At my request, Mr. Hobart, have you reviewed the staff writers by name on the Cannoneer about the time you had this conversation with Miss Monjar? [1226]

A. Yes, I have.

Q. And have you found that among those staff writers were both C.E.A. and C.I.O. members?

A. There are members of both unions, or, at least people that were affiliated with those unions.

Q. As you said, there were none that you know of except Miss Monjar who were writing for any other bulletin or for any other publication.

Trial Examiner Batten: Just a minute. If you are going to take bulletins, you are covering more territory. I don't consider the bulletins in the same category.

Mr. Cannon: I will withdraw the question.

Q. (By Mr. Cannon): Do you know of anyone except Miss Monjar who was on the staff of the "Cannoneer," who at the same time was writing for any publication for any other unions?

A. I do not. [1227]

* * * *

HENRY HAWKINSON,

a witness called by and on behalf of the respondents, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Cannon): Mr. Hawkinson, you are employed by the Cannon Manufacturing Corporation? A. I am.

Q. And in what capacity?

A. General superintendent.

Q. That is, you have charge of general maintenance, of all the organization in the plant?

A. That is correct.

Q. And how long have you been so employed?

A. About three years.

Q. And before that, were you employed in the same place? A. Yes, I was.

Q. In what capacity?

A. As a tool room foreman.

Q. And how long did you work as a tool room foreman before you became general superintendent?

A. I would say close to about 3 or 4 years.

Q. Now, did you as a tool room foreman have supervision of a man named Ned Mandella? [1232]

A. I did.

Q. Did he work under you for a time?

A. He worked for me about six months or more.

Q. And where was he working? In what particular division?

(Testimony of Henry Hawkinson.)

A. He was working in the tool crib as a tool crib attendant.

Q. And did you do anything towards having him removed from that department? A. I did.

Q. What did you do?

A. I contacted the superintendent and told him that I could not have Mr. Mandella working there any longer because he was spending too much time doing other business outside of his regular duties.

Q. And whom did you contact and tell that to?

A. Ray Cromwell, who was then superintendent.

Q. General superintendent, and he held then the same job you now hold? A. That's right.

Q. There has been considerable testimony here concerning Mandella's soliciting membership in various organizations and also soliciting for customers for some deal he had for a laundry.

A. Yes, he had been in the laundry business for years, and he was running off raffles on rifles.

Q. Did you come in contact with him at all where any [1233] question was had concerning the formation of a union? A. No, I did not.

Q. Did you know of anything to the effect that he was signing up people to some organizations or clubs? A. No, I didn't.

Q. Now, calling your attention to this man Ar-mant, do you know him?

A. Well, I remember him, yes.

Q. Calling your attention particularly to the time when he returned to the plant after having

(Testimony of Henry Hawkinson.)

some kind of arbitration hearing, did you attend the arbitration hearing yourself?

A. No, I did not.

Q. But you remember his coming back to work?

A. Yes, he was reinstated.

Q. Were you at that time general superintendent or foreman? A. General superintendent.

Q. Now, calling your attention to the testimony he gave to the effect that he had a conference with you and Bob Cannon that day he came back to work, do you remember having such a conference at that time?

A. No, I do not. I do not know when he came back to work.

Q. Now, directing your attention to the time when there was a strike or a threatened strike, and the meeting in the cafeteria, do you remember having a conference with both Cannon and Armant at that time? [1234] A. Yes, I do.

Q. Where did that occur to your recollection?

A. As far as I can remember, in my office.

Q. And is that on the factory floor?

A. Yes.

Q. Who else was present besides yourself, Armant and Cannon?

A. I think the foreman in the department was there.

Q. What is his name?

A. I think it was Bill Yockey.

Q. Tell us what the conversation was, will you?

A. Well, to begin with it was on a Saturday, I

(Testimony of Henry Hawkinson.)

remember that. I was around there to about 5:00 o'clock, and just as I left the factory, why, somebody told me there was a strike or walkout, and I went back in again and Mr. Mandella and the whole bunch of workers were down in the cafeteria, and Mr. Mandella was holding a speech down there, and I went up there and asked him what it was all about, and he said he would not work as long as Mr. Armant was in the plant. I tried to get him back to work but couldn't do anything with him. Mr. Robert Cannon was called in and he talked to him, and he was pretty beligerant. So, before this man went home——

Q. What man? A. Armant.

Trial Examiner Batten: Was there another man named [1235] Fellows involved in this thing?

The Witness: Yes, I believe there was.

Q. (By Mr. Cannon): First, before you get up to that, before Armant went home, how many people would you approximate were in the cafeteria?

A. Well, I would say one hundred or one hundred fifty people.

Q. And this was just after the swing shift had gone home? A. Yes.

Q. And what shift was Armant working on when he came back that day? A. Swing shift.

Q. And when you had your conversation with Mandella, before Bob Cannon came down, were you on the premises or where?

(Testimony of Henry Hawkinson.)

A. No, I was just talking to them there, for the people to go back to work.

Q. Did you talk to the people yourself, trying to get them back?

A. Yes, I don't remember what I said, but I thought they should go back.

Mr. Ryan: I object to what you thought.

Trial Examiner Batten: The question is what you told them, not what you thought.

The Witness: Yes.

Q. (By Mr. Cannon): Did you hear any part of Mandella's speech that day? [1236]

A. I probably did, but I can't remember exactly what he said, except that I remember that he didn't want to go back to work before those two men were removed.

Q. During the same afternoon, did you and Armant have a talk with Bob Cannon?

A. Yes, we did.

Q. That is the particular conversation I am after. Now, is that the one that occurred in your office?

A. That's right.

Q. State what was said.

A. We told him that under the circumstances that production was needed that it would be better for him to go home, and we would be willing to pay him for the time he lost, and at the same time we would have an arbitration on it.

Q. You told him that?

A. I told him that.

(Testimony of Henry Hawkinson.)

Q. And was anything said about why you wanted him to go back home that day?

A. So that the other fellows could go back to work.

Q. Did Mr. Armant make any request of you that he, Armant, be allowed to make a speech in the cafeteria?

A. Not that I remember.

Q. In any event, did you tell him he could not make a speech?

A. No. [1237]

Trial Examiner Batten: The question is, do you recall him asking you that.

The Witness: No, I don't recall.

Q. (By Mr. Cannon): Now, what was the rest of the conversation, then, in addition to what you told us?

A. That is about all. Armant went home and the people went back to work again.

Trial Examiner Batten: Did Fellows go home too?

The Witness: I think he went home, too, as I recall it.

Q. (By Mr. Cannon): Now, were you on the day shift before the swing shift came on?

A. That's right.

Q. And do you recall seeing a man named Andy Bereznak and a man named Barnett around the people that morning?

A. Well, I didn't see him myself.

Q. Were they on the swing shift or day shift?

A. I really can't recall if they worked on days

(Testimony of Henry Hawkinson.)

or nights. I think Andy worked on the swing shift at that time.

Q. And in any event, you don't have a recollection of them circulating among the employees?

A. No.

Q. Did you hear any talk, while these people were moving around, about this being a production meeting in the cafeteria? A. No.

Q. Did you have any advance information at all, Mr. [1238] Hawkinson, about this gathering in the cafeteria?

A. No, I certainly didn't. It surely struck me like lightning.

Q. I will ask you to state, Mr. Hawkinson, during the time that you were foreman before you began your general superintendent, did you ever discriminate for or against any union members down there?

Mr. Ryan: Mr. Examiner, I object to that as calling for a self-serving declaration.

Trial Examiner Batten: Well, he can say whether he did or didn't. Of course, I don't intend to be bound by it. I will take the evidence in the record and determine it for myself whether there has been or not, but I have no objection to the witness answering the question.

The Witness: Not to my knowledge. As far as I know, the labor laws——

Q. (By Mr. Cannon): What I am asking about, was there any discrimination? Did you prefer one group over any one else in giving them the work?

(Testimony of Henry Hawkinson.)

A. No. [1239]

* * * *

Cross-Examination

Q. (By Mr. Ryan): Mr. Hawkinson, on the day that Mr. Armant came back to work that you have testified about, where did you first learn that some of the employees were in the cafeteria?

A. I can't recall. I was ready to go home; I was right outside the door ready to go back, and somebody said there was a general walkout.

Q. Who told you that?

A. One of the employees. I don't remember who it was.

Q. Then, what did you do?

A. I went down to the cafeteria?

Q. You did? A. Yes. [1241]

Q. And what did you see when you got there?

A. Mr. Mandella was there talking to the employees, and I asked him what it was about.

Q. Did you call him over to see what it was all about?

A. Yes, I called him over and asked him what it was all about, and he said that this Armant was disqualified from working in there, and he wanted him to be removed.

Q. He wanted him to be removed?

A. Yes.

Q. What did you say to him then?

A. I told him then that there was nothing I could do right then. I couldn't fire a man just like that, because the man was reinstated. So, that is

(Testimony of Henry Hawkinson.)

when Mr. Cannon was called in, as I said before, and then finally he agreed of his own free will to go home that night so that everybody could go back to work.

Q. Well, how many employees did the company have at that time?

A. I would say probably about 300 on that shift, probably less, probably about 250 on the swing shift.

Q. You didn't get up and make any speech to the employees there, did you?

A. No, I don't think I did. I probably talked to some of the fellows.

Q. I am interested in what you know that you said. Now, if [1242] you know that you said something to the employees, say so, and we will be glad to hear what you said.

A. I asked them all to go back to work.

Q. Where were you then when you asked them to go back to work?

A. In the cafeteria.

Q. Did you go up in front of them and address the crowd?

A. Yes.

Q. What did you say?

A. I asked them to go back to work because production was needed, and they said they weren't going to go back to work.

Q. Who said that?

A. Mr. Mandella.

Q. Did you say anything more?

A. No.

Q. You just walked out?

A. Yes.

Q. Were the employees standing up or sitting

(Testimony of Henry Hawkinson.)

down? A. They were standing up at that time.

Q. About what time of day was that?

A. About 5:00 o'clock, between 5:00 and 5:30.

Q. And what did you do after that? Did you walk out of the cafeteria?

A. Yes, I went up to my office, and Mr. Cannon came down.

Q. Which Mr. Cannon? [1243]

A. Mr. Robert Cannon.

Q. And you and he talked together?

A. That's right.

Q. And what did Mr. Cannon say and what did you say?

A. We were just talking about as to how we could get the people back to work. We didn't want a walkout.

Trial Examiner Batten: Did Mr. Cannon talk to the employees or with Mr. Mandella?

The Witness: He talked to Mandella. He came into the cafeteria and talked to Mandella.

Q. (By Mr. Ryan): Were you present when he was talking to Mandella?

A. I can't remember what he said. I probably was present when he talked to him, but it was a long time ago.

Q. Then you and Bob Cannon talked in your office afterwards? A. That's right.

Q. Was anyone else present besides you and Mr. Cannon?

A. This Armant was present there.

Q. Who else was there?

(Testimony of Henry Hawkinson.)

A. The foreman, Mr. Yockey, and he agreed to go home, and we would pay him for the night's work.

Q. I ask you, Mr. Hawkinson, whether anyone said that it was a production meeting out there?

A. No, everybody was hollering that a strike was going on.

Q. Who was hollering?

A. Some of the people there. I can't remember just who was [1244] there.

Q. There were considerable people working at the time?

A. Just a few people in some departments.

Q. Now, this Andy Bereznak and George Barnett, you heard also that they had been going through the plant before that time?

A. No, I didn't.

Q. When did you first find that out?

A. When I was going home somebody told me that there was a walkout.

Q. When did it first come to your attention that George Barnett and Bereznak had gone through the various departments?

A. That never came to my attention.

Q. Never did? A. No, sir.

Q. When you are on your job, do you stay in your office most of the time?

A. I was out in the plant quite a bit.

Q. At that time you were out at the plant?

A. Yes, I am always around the plant quite a bit.

(Testimony of Henry Hawkinson.)

Q. And still you didn't see any employees leaving their jobs until somebody told you about it?

A. I was ready to go home, and it went fast.

Q. You didn't see them walk off?

A. No, because I was just outside the door, and somebody [1245] hollered there was a walkout, and by that time the people were walking to the cafeteria.

Q. Walking out of the cafeteria?

A. No, walking from the plant to the cafeteria.

Q. Where were you at that particular moment?

A. I was out in the lobby ready to go home. I had my hat and coat on ready to go home.

Q. As a matter of fact, you didn't deduct any wages from these employees for the time they were in the cafeteria that day, did you? They got their full pay that day that they went into the cafeteria to listen to Mandella?

A. I can't remember, because it was only about a half hour when the whole thing was over. I don't think we did.

Q. You say, "I don't think we did?"

A. I can't remember whether we did. I don't think so.

Q. You don't think you deducted any wages?

Mr. Cannon: I will stipulate that we did not make any deductions.

Mr. Ryan: I will accept the stipulation.

Q. (By Mr. Ryan): Did you go down to talk to Armant when he was working on his job?

A. That's right.

(Testimony of Henry Hawkinson.)

Q. Did you go down and talk to him?

A. I did.

Q. When was it that you went and talked to him with respect [1246] to this conversation that you had with Mandella in the cafeteria?

A. After I came back from the cafeteria, after I found out what it was all about.

Q. Then, you talked to him? A. Yes.

Q. He was working on the job? A. Yes.

Q. There were other employees working in that department, too?

A. There were a few, not very many of them, just a few.

Q. What did you say to Armant at that time?

A. Well, I can't remember exactly what I said, but I said as far as I was concerned I didn't have anything against him. I couldn't tell him to go home, but I said in the interest of war production, it would be better for him to go home, and we would pay him for the night's wages, and he finally decided to do so on his own accord.

Q. By the way, what did Mandella say to you in the cafeteria about why he wouldn't work and why these other employees weren't going to come back to work? What did he say to you in that connection, if anything?

A. All he said was that as long as the other fellows were there, they weren't going back to work.

Q. What did he mean?

A. I think Fellows and Armant, but I think Fel-

(Testimony of Henry Hawkinson.)

lows worked on [1247] days. I am not certain on that.

Q. Did you say anything in reply to that?

A. I probably did.

Q. What?

A. Well, I tried to talk the men into going back to work.

Q. What did you say?

A. I said, what is the difference?

Q. And what did Mandella say?

A. He said it made a lot of difference.

Q. Did he explain?

A. I can't remember just what he said. It was quite a long time ago, and it would be pretty hard to remember just what the actual conversation was.

Q. Well now, going back to the conversation with Armant there, while he was working in his department, will you tell us what the conversation was.

A. Well, as far as I can remember, I went over to Armant and told him that I had nothing against him at all, or something like that, and I told him that, however, that the people were going on strike and that production was very vital and so forth, and I thought it would be a good gesture on his part if he would go back home. Of course, at first he was a little belligerent about it, and we had quite a talk.

Trial Examiner Batten: You said, "We had quite a talk?"

The Witness: Him and I. [1248]

Q. (By Mr. Ryan): What did you say?

A. As far as I was concerned, he was all right, but as far as the union was concerned they were on

(Testimony of Henry Hawkinson.)

strike, and it was necessary to have the production going.

Q. Did you say that to him? A. Yes.

Q. What did he say?

A. Well, he felt that he hadn't done anything, and that he was entitled to work.

Q. Well, he hadn't done anything as far as you were concerned? A. No.

Q. Is there anything else that you recall?

A. No, it is quite sometime ago.

Q. Did you take him back to Bob Cannon's office?

A. No, he came to my office. He was working close to my office.

Q. So you asked him to come into your office?

A. That's right.

Q. And then after he got into your office, did Mr. Bob Cannon come in?

A. Bob Cannon was in there then.

Q. What was he doing in your office at that time?

A. He was already in the cafeteria and came back.

Q. You were talking to him first then before you talked to Armant? [1249]

A. I probably did. I think, I talked to Armant a couple of times.

Q. What took place when you and Bob Cannon and this Armant got together in your office? What was the conversation?

A. Just that we would like to have the employees back to work because production was vital and was

(Testimony of Henry Hawkinson.)

needed, and he said, "O.K." and finally went home.

Q. You also told him that you would give him a hearing?

A. Well, we had nothing to do with that. There was an arbitration coming up. That came under the personnel department, and I wasn't acquainted with that.

Trial Examiner Batten: I thought you said something about the arbitration.

The Witness: Well, that most likely there would be one.

Trial Examiner Batten: Well, you told him that there would be an arbitration.

The Witness: Yes, that's right.

Q. (By Mr. Ryan): What did you have in mind when you said there might likely be an arbitration?

A. Well, I had in mind that there would be an arbitration.

Q. So far as you know, at that time you knew from your being in your position in the plant that Armant, that there was nothing wrong with Armant?

A. No, there was nothing wrong with Armant. As far as I was concerned he was O.K. [1250]

Q. You couldn't point out anything as far as his work was concerned?

A. No, I didn't have anything against Armant.

Q. I believe you testified that Ned Mandella was transferred from the tool crib over to the—

A. Assembly, yes.

Q. To the assembly, is that right?

Q. Do you know about when he was transferred?

(Testimony of Henry Hawkinson.)

A. No, sir, I can't remember that. It must have been around 1939 or 1940.

* * * *

[1251]

Mr. Cannon: In connection with this Case No. 21-R-1354, I desire to offer as Respondent's Exhibit 12—

Trial Examiner Batten: Are there several documents in that connection?

Mr. Cannon: Yes.

(Thereupon, the documents referred to were marked Respondent's Exhibits Nos. 12-A and 12-B, for identification.)

Mr. Cannon: 12-A is the notice of election, employees of Cannon Electric Development Company and Cannon Manufacturing Corporation, the election to be held September 9, 1941 and the appending documents. I have already exhibited them to Mr. Ryan.

Respondent's Exhibit 12-B is copy of Certificate of Results of Consent Election, touching upon the election held September 9, 1941. [1259]

Trial Examiner Batten: What date is that?

Mr. Cannon: That is dated September 10, 1941, and I will state for the record and for the benefit of all of us that following this last document I mentioned which has been marked as Respondent's Exhibit 12-B, came the order dismissing the protest of the conduct of election which was offered by the Board as Board's Exhibit 67-B, and I would like to waive the offer of duplicates unless you require them.

Trial Examiner Batten: No, I have waived the duplicates on the others.

Mr. Ryan: You are on Exhibit 12-B now?

Mr. Cannon: Exhibit 12-A and 12-B, yes.

Trial Examiner Batten: Any objections to the exhibit, Mr. Ryan?

Mr. Ryan: I have no objection.

Trial Examiner Batten: Respondent's Exhibits 12-A and 12-B will be received.

(Thereupon, the documents heretofore marked Respondent's Exhibits Nos. 12-A and 12-B, for identification, were received in evidence.)

[Printer's Note]: Respondent's Exhibit No. 12-B is set out in full at page 709 of the printed Record.

* * * *

[1260]

ROBERT J. CANNON,

a witness called by and on behalf of the respondents, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Cannon): Your name is Robert J. Cannon? A. That's right.

Q. And you are the vice-president, are you, of the Cannon Manufacturing Corporation?

A. That's right.

Q. You have been such for several years, have you not? A. Yes.

Q. And what other, if any, titles do you hold there in the plant? A. General manager.

Q. And are you in charge of all affairs in the absence of James H. Cannon, your father?

(Testimony of Robert J. Cannon.)

A. Yes.

Q. And have been so for several years?

A. Yes.

* * * *

[1292]

Q. (By Mr. Cannon): During the whole of this period that you had been there as general manager—by the way, how long have you been general manager?

A. I got the title of general manager in April or May of 1942.

Q. And you have acted as such up to the present time?

A. Yes, continually.

* * * *

[1298]

Q. Now, I want to call your specific attention to some testimony given by Mr. Armant concerning some activities of yours during the time this so-called strike was in progress. Do you recall the occasion when you talked to Armant on the date when the people lined up in the cafeteria?

A. Yes.

Q. Tell me the circumstances of that, Mr. Cannon.

A. I had already gone home, and I got a phone call. I don't remember who the individual was who phoned, but he said that a group walked out of the plant, and I better get right back there. So, I drove there as fast as I could and went out in the cafeteria, and I was met on the floor about half way to the cafeteria by Mr. Hawkinson, superintendent at the time, and we walked out to the cafeteria together. There were roughly 100 or 150 people standing around there.

Some were sitting on tables, some were sitting on

(Testimony of Robert J. Cannon.)

the backs of chairs, and people in the back were standing on chairs. [1325] There was a general mob of people and with them Mandella in the middle. When I arrived, he was making some sort of a speech and waving his arms around, and as soon as I walked in he indicated to me in a very loud voice that they were out on strike and would not go back to work as long as Mr. Armant was in the plant.

On the way down Mr. Hawkinson told me the gist of the thing and had advised me that Mr. Armant was still on his machine. So, I told Mr. Mandella that we didn't like being muscled around by their gestures of walkouts and things. But yet, he did have his crowd worked up to such a pitch that for the sake of allowing them to cool off, we did consent to arbitrating the case, but that we would not agree then and there to removing Mr. Armant as an employee.

So, after a few minutes they agreed that that would be all right, if we would get him out of the plant that evening. So I agreed to that, and they went back to work.

I then went to the superintendent's office and called Mr. Armant and told him about it. He objected to it and wanted to make a speech explaining his side of the case, and in explaining it he waved his arms around a little bit, and the superintendent's office has an open window, so I told him to come to my office upstairs.

I then explained to him that we would be willing to pay him for his time off, and we would arbitrate the case, and [1326] that we would arbitrate the

(Testimony of Robert J. Cannon.)

thing with the union. He refused and he insisted on his rights to talk to these people and explain his side of the case. So I asked him to go again, and I said if he didn't agree to go, I would have to have him removed. So he agreed to go.

* * * *

[1327]

Cross-Examination

Q. (By Mr. Ryan): Mr. Cannon, you are now general manager and vice-president, is that right, of the Cannon Manufacturing Corporation?

A. That's right.

Q. When did you become general manager?

A. In April or May of 1942.

Q. And when did you become vice-president of the corporation?

A. The title of vice-president was bestowed upon me in 1941, as I remember, which coincides with the date that the—I am not sure, whether it was 1939, the date of the dissolving of the corporation, but I think.

Mr. Cannon: I will get you the exact date from the minute book, if you want me to.

Q. (By Mr. Ryan): Well, is the statement approximately correct?

Trial Examiner Batten: When the corporation was organized, you were vice-president?

The Witness: No, the corporation was organized in 1915.

Trial Examiner Batten: Then, you had a change in name?

The Witness: And in 1939 the name was changed. [1330]

Trial Examiner Batten: And that is when you became vice-president?

The Witness: I am quite sure it coincides with that. The title of vice-president was not used very generally until 1940 when I had occasion to write letters. It being a privately owned corporation, the corporate affairs were fairly simple as far as I was concerned.

Mr. Cannon: That is the approximate date?

Q. (By Mr. Ryan): Mr. Cannon, prior to becoming general manager, what was your position, what position did you hold aside from the vice-presidency?

A. Well, we had never been awfully strong on titles, but my Dad left me the title before he left on a trip in 1941. He was president and general manager, and he called me assistant general manager at that time.

Q. When was that, about? A. About 1940.

Q. And you continued to be assistant general manager until you became general manager, is that right? A. Yes. [1331]

* * * *

JAMES H. CANNON,

a witness recalled by and on behalf of the Respondents, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Cannon): Mr. Cannon, have you ever been able to find the contract with the International?

(Testimony of James H. Cannon.)

A. Oh, yes, but we haven't located the same copy. I wouldn't trust an unsigned one, because in those instances they were usually submitted two or three times before they were acceptable, but our office copy disappeared.

Q. But you have been unable to locate it in the last few days? A. No.

Mr. Cannon: I will state to the Examiner that we are trying to locate it, and if we are not able to find it, we will try to get it from the A. F. of L., if we can.

Q. (By Mr. Cannon): Mr. Cannon, you have been here all during this time that your son Robert was on the stand? A. Today, yes.

Q. You heard your son's testimony with respect to the strike of the C.I.O. that was held about September 2, 1941, did you? A. Yes.

Q. Now, is there anything in connection with that strike or [1337] in connection with the conference held with the National Labor Relations Board that you know of, in addition to what your son has testified?

A. Well, at the Board's offices, as I recall it, we assembled in the ante room first, and there were representatives of the A. F. of L., C.I.O. and C.E.A., and the company there, and we assembled in Mr. Walsh's office. There was Robert and myself who represented the company, and it seems to me that you attended the meeting. Connelly was there for the C.I.O., and the A. F. of L., I am not sure who represented them, but they weren't too enthusiastic

(Testimony of James H. Cannon.)

about the election proposition in any event, and Washington had the Board on the wire that morning.

Q. Is that what the men there told you?

A. They told us there at the time that the strike had been occasioned by the discharge of five employees, and I agreed to a consent election and suggested that the five employees be maintained on the payroll until their cases were settled by an outside tribunal. This wasn't satisfactory to the C.I.O. They insisted that they be put back in the plant and wanted to know if they could issue that order. Lt. Commander Powell was there as an observer in the Navy, and he said there will be blood shed by the next shift—they had loud speakers going and that morning they had a fight there. There was about 1500—— [1338]

Trial Examiner Batten: Just a minute, are you going to tell us about what happened at the Board?

The Witness: It led up to the Board's hearing. I consented to take the five back, with the exception of the one, the Navy would not accept, by the name of Frenchy.

Q. (By Mr. Cannon): Frenchy Martin?

A. Yes, but the other four were re-instated.

Q. And then thereafter did you hold a hearing on them, Mr. Cannon?

A. I don't recall that we did at that time.

Q. Now, then later on you had a hearing, did you not, with respect to George and Fellows?

A. No, that was on Armant and Fellows, and the sole difficulty there—it wasn't merely an arbitration proposition; it was an oversight in the contract

(Testimony of James H. Cannon.)

that the union's own lawyer didn't know about, calling for the discharge of an employee if recommended by the union, provided the company management concurred in the charges. Apparently those two had been discharged without investigation on the management's part, but merely on the representation made by the union.

So, we held a hearing, myself representing the company, one individual representing the C.E.A., and a neighboring manufacturer, and Lt. Commander Powell was there as an observer for the Navy.

Q. What occurred? [1339]

A. Armant's record appeared to be very black, and in my opinion, he had a police record and changed his name without any apparent reason, and he had been a trouble maker, and I heard a lot of complaints about him, and quite a set of complaints which, I think, are still available. And the chap Fellows, the only thing I had against him was he called me an S.O.B., and he didn't like the C.E.A. So, I re-instated Fellows and confirmed the discharge of Armant. [1340]

Q. (By Mr. Cannon): Now, then, in connection with the second National Labor Relations Board election, do you recall what occurred at the plant prior to that election, Mr. Cannon? [1341]

A. The second election?

Q. In the second election.

A. I didn't pay any attention to that. That was just a squabble between the C.E.A. and the C.I.O., and they fought it out on its merits.

Q. Now, did you at any time do anything, or

(Testimony of James H. Cannon.)

did you at any time suggest to any person as to who should be the officers or directors of the Cannon Employees' Association? A. Positively not.

Trial Examiner Batten: I presume, Mr. Ryan, that you want to continue your objection.

Mr. Ryan: Yes, I do.

Q. (By Mr. Cannon): Well, did you make any suggestions to them as to who should be an officer of that Association?

A. Never did, and I have expressed myself repeatedly that they should establish their officers democratically by honest balloting.

Q. On all of these elections that you have been speaking about, I mean these elections for officers or directors of the C.E.A., did you participate in any way? A. In no way whatsoever.

Q. In connection with the election of this contact committee in the first instance—how long, by the way, did that contact committee operate?

A. I don't think it really ever got functioning. They had [1342] the committee elected by secret ballot, and then I was informed that it didn't meet the labor laws as it was set up in Washington, and the C.E.A. started to organize, I guess, under that old name of the Association.

Q. The Cannon Employees Recreation Association?

A. Yes, sir, and the C.I.O. came in at that time. We were actually operating under the A. F. of L. Machinists contract, but they were not functioning.

Q. Did you have anything to do with the non-functioning A.F. of L. and their contract?

(Testimony of James H. Cannon.)

A. No, unless you can say that they all quit paying dues.

Trial Examiner Batten: What, if anything, did you do in connection with this contract committee? I mean after the officers were elected, did you do anything about it?

The Witness: Commissioner, at that time I didn't in any way set it up.

Trial Examiner Batten: Well, did you do anything to disestablish it or to abolish it, or if you found out that it wasn't proper, what steps did you take, if any? What did you do, just let it die?

The Witness: It perished almost before it got really into what you might call a nebulous form. They were all trying to set up committees in the shop, the C.E.A., the A. F. of L., the Cannon Employees' Association, and they all anticipated bargaining independently with us. Every one [1343] wanted to bargain. We didn't have any union.

Trial Examiner Batten: In other words, you didn't take any steps to abolish it by notifying either the committee or the employees that it was improper? It died only a natural death?

The Witness: Frankly, I don't know, but I was informed that it wouldn't meet the requirements of the Labor Act. [1344]

(The documents heretofore marked as Respondents' Exhibits Nos. 20, through 28, for identification, were received in evidence.)

[Printer's Note]: Respondent's Exhibits Nos. 26, 27 and 28 are set out in full at pages 710-711 of this printed Record.

(Testimony of James H. Cannon.)

* * * *

JAMES H. CANNON

a witness recalled by and on behalf of the Respondents, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Cannon): Mr. Cannon, when you were on the stand last evening at the conclusion of the Board hearing, as I recall, we were discussing this contact committee and whether or not anything was done by you to disestablish that contact committee. I think the last of it was that you had no recollection of that matter as to whether anything was done. Can you state whether you have refreshed your recollection at all in that regard?

A. Well, I have no recollection of any direct statement by me, but the election which superseded that in any event held the bargaining agency would be established legally, and it would wipe out the contact committee, if it was in existence.

Trial Examiner Batten: My question was and still is, did you do anything to tell the employees that it was out or that it was illegal?

The Witness: I can't recall. There were too many [1363] things at that time, and this is not impressed on my memory.

Q. (By Mr. Cannon): Do you recall whether or not any of the members of the old contact committee later became directors or officers of the Cannon Employees' Association.

A. I don't have any tie-in on that, but I would

(Testimony of James H. Cannon.)

assume that there would be a considerable number on account of the fact that the contact committee was elected by secret ballots, and they would elect their favorite choice, and they would elect several of those.

Q. Well, did you make any request of any of the employees that they elect any particular person on any board or committee?

A. I certainly did not, and I leaned over backwards to avoid any indication that way. I wanted absolutely a democratic choice in the employees.

Q. Is that the same situation with respect to all of these organizations that you mentioned, including the contact committee, the Cannon Employees Recreation Association, the Cannon Employees' Association and the Cannon Employees Association, Incorporated?

Mr. Ryan: I object to that as calling for a self-serving declaration, there being no foundation laid for it.

Trial Examiner Batten: He may answer it.

The Witness: There was absolutely no indication on my part as to choice, because of the fact that I was combating [1364] complaints of internal interference in the plant, and the only way to satisfy the employees is to have them confident that they were making their own selections.

Q. (By Mr. Cannon): Now, I asked Robert Cannon about the use of the Cannon Company trademark on cards of the Cannon Employees' Associa-

(Testimony of James H. Cannon.)

tion. Do you recall seeing those cards or the Association bearing that emblem?

A. It was called to my attention, and I was very much incensed about it, and it was immediately ordered stopped, and the only way we could trace it is that they probably took it from our memoranda matter.

Q. And was that the first time you saw it?

A. It was the only time it was called to my attention.

Q. The action you took on it was right soon after it came to your attention?

A. Immediately.

Q. Now, I would like you to state when it was, as near as you can recall, when it was that Mr. Cromwell left the employ of the company?

A. The date there is not definitely fixed in my mind. It was some time in 1942, as I recall it, possibly along about—well, I can't hold it down to the month. We can establish that in the records. It was about the middle of the year.

Q. About May or June of 1942?

A. I thought it was a little bit later than that, or maybe not. [1365]

Q. Did you, prior to his discharge, have any conversation with him concerning any of his union or anti-union activities?

A. I had constant trouble with him from the first moment on that. He came from Dayton where they had no unions, and he was very antagonistic against the union. He was going constantly against

(Testimony of James H. Cannon.)

instructions and causing me trouble, because he wasn't fair with the men.

Q. And that is when it was that you terminated your relationship with him?

A. I didn't discharge him directly. It was my intention to allow him a little more time after I got Mr. Brady, but his conduct became so obnoxious that I had to let him go.

Q. When you say that he was going contrary to the management, in some particulars, will you indicate what you mean on that?

A. Well, the stock room was the first place we had trouble. We set up a new system, and because it came from the outer office he told the employees to disregard it, and he was very unfair on the labor problems.

Q. And did you have conversations with Mr. Cromwell concerning the attitude he had taken with the organization?

A. I warned him time and time again, but it didn't do any good.

Q. What do you mean?

A. His attitude to labor was antagonistic, and we had no right to interfere with them in any manner, and they could belong to any union they desired. [1366]

Q. And has that always been your attitude from the period of this organization in 1941, at least up to the present time?

A. I think you will find bulletins which indicated that they could belong to any unions. [1367]

(Testimony of James H. Cannon.)

* * * *

Mr. Cannon: At this time, just so the record will be clear, I want to file the amendment to answer, the original, and then I want to serve Mr. Ryan a copy of it. May I serve you one, also, for the A. F. of L. and C.I.O.?

Mr. Ryan: Yes.

Trial Examiner Batten: That may be marked and received as Board's Exhibit 1-Z.

(The document referred to was marked as Board's Exhibit No. 1-Z, and was received in evidence.) [1369]

* * * *

Cross-Examination

Trial Examiner Batten: I have a question of Mr. Cannon. Do I understand that the C.E.A. was recently disestablished, or recently went out of business?

The Witness: I heard that they disincorporated, and I was dumbfounded, because when they disincorporated they were no longer existent, and it left us without any bargaining agreement.

Trial Examiner Batten: You mean the contract that you had with the C.E.A.?

The Witness: Yes, they were incorporated.

Trial Examiner Batten: And it was understood that that corporation was dissolved?

The Witness: I heard from some source that it was dissolved. I have seen nothing official.

Trial Examiner Batten: After you received that

(Testimony of James H. Cannon.)

information, have you or anyone representing the company taken any [1372] action notifying the employees that it was no longer in existence, that the contract is no longer in existence?

The Witness: No, the employees, as I would understand it, are members of the corporation, and if they dissolved they would know.

Trial Examiner Batten: The question is, the company didn't take any steps to notify them about it.

The Witness: No, that I know of.

Trial Examiner Batten: Did the C.E.A. officially notify you that it had been dissolved and that the contract was therefore void?

The Witness: I don't recall receiving any official notice, but I was told that it was dissolved.

Mr. Cannon: Well, the documents I offered in evidence this morning, Exhibits 30 and 29, which you rejected, have reference to it.

Trial Examiner Batten: Yes, I know I rejected both of those. The point is, I am not concerned with what happened afterward. I am concerned with whether or not it was dissolved. Mr. Ryan, I think you better have some representative of the C.E.A. Is Mr. Grady here?

Mr. Grady: Yes.

Trial Examiner Batten: Are you in the position to give us that information?

Mr. Grady: Mr. Gibson was the one that handled that the [1373] most. However, I can give you a little information on it, or attempt to.

(Testimony of James H. Cannon.)

Trial Examiner Batten: Well, we will see later. I think we should have something here which would indicate what the present status of the C.E.A. is.

Mr. Grady: The present status?

Trial Examiner Batten: If you want to testify on it, you will have to come up here and be sworn.

Mr. Cannon: Mr. Cannon, did you have anything to do with the dissolution of the C.E.A., if it was dissolved?

The Witness: I certainly did not.

Mr. Cannon: After you had been advised that the C.E.A. had been dissolved, did you give any instructions with respect to the non-checkoff of dues?

The Witness: They held an election there of some sort, or a vote, rather, and the collection of dues had gone through tabulating by that time when we got the information that they dissolved, so we held that payment in abeyance and notified the members that it would be refunded on the next pay check.

Mr. Cannon: You then have the money that was checked off under the old C.E.A. contract, or it has already been refunded to the C.E.A. members?

The Witness: We either got it or refunded it.

Mr. Cannon: Did anybody make any demand upon you for [1374] that money?

The Witness: Not that I know of. If they had, Bob would probably have received it.

Mr. Cannon: That is all.

Mr. Ryan: Mr. Cannon, you say you notified the C.E.A. members in your plant that they would

(Testimony of James H. Cannon.)

be reimbursed for the dues you checked off. Now, since you heard that the C.E.A. was dissolved, how did you notify these C.E.A. members?

The Witness: My recollection is that we were going to publish it in the Cannoneer in the next issue, which they always receive.

Mr. Ryan: Have you published it?

The Witness: I don't think that the second issue is off the press yet, if it isn't out today. I wouldn't say that it hadn't gone out in the preceding issue. Robert might have received some inquiries, or undoubtedly had some questions from the employees, but they didn't come to me direct.

Mr. Cannon: I am going to ask Mr. Robert Cannon about that. I want the record cleared up.

Trial Examiner Batten: It should be.

Mr. Ryan: Since this rumor to the effect that the C.E.A. was disestablished or dissolved, have you had a contract with any organization out there? Have you any contract now?

The Witness: We haven't any contract now.

Mr. Ryan: You have none now? [1375]

Mr. Cannon: I don't know whether he has or not, frankly. It is calling for his conclusion whether he has or not. If there was a dissolution of the corporation, there is a legal question in my mind whether the contract does exist or not.

Trial Examiner Batten: It depends on the State law. Certainly I can't leave this thing up in the air in this position.

MR. CANNON: Well, I am going to try to clear it up, if I can.

* * * *

ROBERT J. CANNON,

a witness recalled by and on behalf of the Respondents, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Cannon): Mr. Cannon, referring to Exhibits 29 and 30 for identification, is that the first——

Trial Examiner Batten: You mean rejected.

Mr. Cannon: Well, they are still marked for identification.

Q. (By Mr. Cannon): All right, referring to rejected Exhibits, Respondents' Exhibits 29 and 30, is that the first information [1376] you received concerning any purported dissolution of the C.E.A.?

A. Well, I knew the election was going on just before then, and I had heard the results, although I don't know who I heard it from. I heard that the results of the election that the C.E.A. had, that they voted to become a part of the M.E.S.A.

Q. After you heard that rumor, did you receive rejected Exhibits 29 and 30? A. Yes.

Q. And was the written notice that you received from anybody of the dissolution of that company?

A. Yes.

Trial Examiner Batten: Well, on the basis of his testimony, I will receive Respondents' Exhibits 29 and 30.

(Testimony of Robert J. Cannon.)

(The documents heretofore marked as Respondents' Exhibits Nos. 29 and 30, for identification, were received in evidence.)

[Printer's Note]: Respondent's Exhibits Nos. 29 and 30 are set out in full at pages 714-716 of this printed Record.

Q. (By Mr. Cannon): Now, at that time had you already made certain deductions of dues, or checked off dues of the C.E.A. members?

A. Yes.

Q. And do you recall how much that amounted to?

A. It seems that it was in the hundreds of dollars. I don't remember the exact amount. [1377]

Q. Was it \$1,085.00? A. I think it was.

Q. What did you do with that money?

A. I notified the payroll department to withhold issuing any checks for it.

Q. And so that—where is the money now, if you know?

A. The money is either in the hands of the employees or it is on the check-off list. The payroll department has been notified that the money should be refunded to the individuals from whom it was deducted.

Q. Now, did you have any demands made upon you by any organization for the money?

A. Yes, I did.

Q. From whom?

A. I was requested to proceed to deduct the dues, and include it for the M.E.S.A.

(Testimony of Robert J. Cannon.)

Q. Include the \$1,085.00? A. Yes.

Q. Who made that request?

A. The secretary of the C.E.A.

Q. Who is that? A. Mr. Schloeder.

Q. But you refused to comply with that demand?

A. I did.

Q. Has the company done anything more than you have [1378] indicated here, to notify the employees as to whether there is or whether there is not a contract existing?

A. As far as the company was concerned, we didn't officially put up a notice that I know of, because it was in dispute and in conference with the C.E.A. men. We, at that time, instructed them that as far as we were concerned, we still had a contract with that corporation, and we would stand on the basis of having a contract with that corporation until we were notified officially that we did not have such a contract.

Trial Examiner Batten: And have you ever been notified officially that you have no contract?

The Witness: We then received a statement of the dissolution of the corporation and a copy of the notice to the Corporation Commissioner.

Trial Examiner Batten: Did you receive a notice that the contract was no longer in effect?

The Witness: No, I don't remember receiving an official notice, no. [1379]

* * * *

Cross-Examination

Q. (By Mr. Ryan): Mr. Cannon, you received

(Testimony of Robert J. Cannon.)

this document, which is Respondents' Exhibit 29, or the original of it, rather? A. We did.

Q. Now, have you received any other word from the C.E.A. to the effect that it is a dissolved corporation?

A. Not as I remember, in writing.

Q. Have you conversed with some of the representatives of [1381] the C.E.A. as to whether they dissolved?

A. Yes, there was considerable discussion at the time because there was an effort to get us to sign a contract with the M.E.S.A.

Q. Shortly after you got this letter, was it—

Trial Examiner Batten: Did you sign a contract with the M.E.S.A.?

The Witness: Yes.

Q. (By Mr. Ryan): And the contract with the M.E.S.A. was signed about the 10th of April, around that day?

A. Yes, it was around there. I don't know exactly.

Trial Examiner Batten: What is the status of that contract?

The Witness: I haven't any idea.

Trial Examiner Batten: Well, what have you got, two contracts now?

Mr. Cannon: We signed the M.E.S.A. contract, and we thought that that matter would also be dragged out in this hearing.

Trial Examiner Batten: Well, of course, I am not concerned with that.

(Testimony of Robert J. Cannon.)

Mr. Cannon: Well, you asked me what the status was.

Trial Examiner Batten: I just asked the witness. He said something about the contract. What is the status of that? [1382]

The Witness: Our contract had a clause for dissolution after 30 days' notice.

Trial Examiner Batten: Which contract?

The Witness: Both of them, as I remember.

Trial Examiner Batten: You mean either party could notify the other one that after 30 days it was void. Well, have you received a notice?

The Witness: Not a written notice, but I have heard lots of conversation.

Trial Examiner Batten: Well, have you received a written notice from the C.E.A. or M.E.S.A. voiding the contract under the 30 day clause?

The Witness: No, not that I remember.

Trial Examiner Batten: Well, then you have two contracts, apparently. I don't know.

Mr. Cannon: Neither do I.

Trial Examiner Batten: Well, I would suggest that something be done to straighten this matter out.

Mr. Ryan: Mr. Examiner, I want to have this telegram marked as Board's exhibit next in order.

(The document referred to was marked as Board's Exhibit No. 72, for identification.)

Mr. Ryan: I have had marked as Board's Exhibit No. 72 for identification a document which purports to be a copy of a telegram sent to James H. Cannon, President, Cannon [1383] Manufacturing Corpora-

(Testimony of Robert J. Cannon.)

tion and Cannon Electrical Development Company from Matthew Smith, National Secretary of M.E. S.A., dated May 23, 1945. I suppose I should probably ask the question of Mr. Jim Cannon—

Mr. Cannon: We will stipulate that the telegram was sent and received on or about the date it bears, and posted on the bulletin board.

Mr. Ryan: In the Cannon plant?

Mr. Cannon: In the Cannon plant.

Mr. Ryan: Well, I offer it in evidence now as Board's Exhibit No. 72. I will show it to Mr. Robert Cannon.

(The document heretofore marked as Respondents' Exhibit No. 72, for identification, was received in evidence.)

Q. (By Mr. Ryan): Mr. Cannon, after receiving Board's Exhibit No. 72, did you take any steps relative to the telegram, to the matters referred to in the telegram?

A. Nothing but posted it on the bulletin board.

Q. Did you or your father, to your knowledge, take any steps to notify the employees that you were taking some action in regard to this M.E.S.A. contract, after receiving the telegram?

A. No other steps unless that went into the Cannoneer. I don't remember. I didn't personally have anything to do with it.

Mr. Cannon: Mr. James Cannon now tells me he announced it over the loud speaking system, the contents of the telegram. [1384]

(Testimony of Robert J. Cannon.)

Mr. James Cannon: I remember the telegram, and then we posted it on the bulletin board.

Trial Examiner Batten: Does the contract have a 30-day clause, Mr. Ryan, which permits either party to cancel it?

Mr. Ryan: I don't have the contract now, and I don't know what it provides.

Mr. Cannon: We don't have the M.E.S.A. contract here either. We could probably dig it up.

Trial Examiner Batten: Mr. Ryan, will you check that up and find out?

The Witness: I might state to the Examiner that regarding that change we had considerable conferences and were presented with 800 signature cards, if I remember, and check off sheets prior to the working of this contract, so there was at least a sizable knowledge on the part of the employees.

* * * *

[1385]

Mr. Ryan: Mr. Examiner, in connection with the evidence with respect to Elsie Monjar and her removal from the Cannoneer while she was on the staff of the U.E.—C.I.O. paper, I have, since Mr. Hobart left the witness stand, checked the copies of the Cannoneer and the Cannon Employees' Association News to determine whether or not there were any individuals who simultaneously worked for both of those newspapers at any time since Monjar was removed because of her joint efforts for the C.I.O. and the C.E.A.

I found the following magazine here of the Cannoneer and the C.E.A. for the periods that I am

(Testimony of Robert J. Cannon.)

going to mention, and I am going to submit them to counsel for checking.

Mr. Cannon: May I make this objection? I object to that as being immaterial because there was no showing here that the knowledge of such joint efforts or joint writings were known to the company or to its management.

Mr. Ryan: It appears from the examination of the two publications, the Cannoneer and the Cannon Employees' Association News that one, Bernice Rolfe was listed as a staff member of the C.E.A. News during the months of May, 1943, June, July up to August 14, 1943, and that she was listed as a staff member of the Cannoneer for May, June, July, August and September of 1943. [1389]

Mr. Cannon: You mean that you find that she wrote articles in both of those papers?

Trial Examiner Batten: He said that she was listed as a staff member on both of those papers in those months.

Mr. Ryan: John Gibson was listed as a cartoonist for the C.E.A. News beginning with August 21, 1943, through November 27, 1943, and he is listed as a staff cartoonist for the Cannoneer from August 21, 1943, through November 27, 1943.

Rose Skaran is listed as a staff member of the C.E.A. News for October, 1943, and November, 1943, and she is listed as a staff member for the Cannoneer for October and November, 1943.

Howard Foskey is listed as a photographer for the C.E.A. News from at least June, 1944, to January of 1945, and he is listed as a photographer for the

(Testimony of Robert J. Cannon.)

Cannoneer from June of 1944, through January of 1945, and he is still appearing as a photographer for the Cannoneer.

Tom Wyckoff was a director of the C.E.A. News in January of 1941 and has a by-line in the C.E.A. News for January 8, 1945 and January 15, 1945, and at the same time was listed as a staff member for the Cannoneer.

Eldon Beasley wrote an article for the C.E.A. News in February of 1943, and at that time was listed as a staff member of the Cannoneer.

I don't submit that those are all of the people who wrote [1390] on the two staffs simultaneously, but I cite those instances.

Mr. Cannon: Did you make any search, Mr. Ryan, to find out whether any C.I.O. members were listed on both staffs during that period?

Mr. Ryan: Listed on the U.E.-C.I.O. paper?

Mr. Cannon: Yes.

Mr. Ryan: I asked her to do that (indicating).

Miss Dunks: Well, we had no paper during that period.

Trial Examiner Batten: The testimony of Mr. Hobart was that he had not found any on the C.E.A. simultaneously so I don't think it was Mr. Ryan's responsibility to check it anyway.

JUDY DUNKS WILBY,

a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

(Testimony of Judy Dunks Wilby.)

Direct Examination

Q. (By Mr. Ryan): Your name, please?

A. Judy Dunks Wilby. I don't use my married name in my work.

Q. Miss Dunks, do you hold an official position with the C.I.O. Union?

A. I am International Field Organizer for the United Electrical, Radio and Machine Workers of America, C.I.O.

Q. Now, have you checked during the period of 1943 to find [1391] out whether or not any of the C.I.O. members were on the staff of the *Cannoneer*, who were also doing feature writing or bulletin writing for C.I.O.?

A. So far as I know, I have checked, and so far as I have been able to find out, the C.I.O. was not putting out any publications and did not have any dues paying members in 1943.

Q. How about 1941?

A. As far as I have been able to determine from the records, which I have looked at, we didn't have a regular paper. We were issuing organizing bulletins under various names, U.E. Cannon News, mimeographed leaflets, and I didn't observe any feature writers in our paper. I wasn't there at the time. I am only saying from what I saw in the files.

I want to qualify that by saying that we didn't really have any feature writers. Most of the papers were put out by the organizing staff with possibly letters by Cannon employees or an article by Cannon employees.

Q. I don't care whether they are feature writers,

(Testimony of Judy Dunks Wilby.)

staff members of what. I want to know whether or not you know from the examination you made as to whether or not any staff members of the Cannoneer during 1941 were writing bulletins for the C.I.O.

Trial Examiner Batten: Well, which bear their name. In other words, if it discloses the name.

Mr. Cannon: Whether she knows of her own knowledge. [1392]

Trial Examiner Batten: In other words, respondent couldn't possibly know the name unless it was on the bulletin. In other words, the name was never disclosed to anybody, and in the Cannoneer, didn't you have names appearing on there when you put out your regular paper for a while?

The Witness: I have checked and was unable to find those papers, because the particular ones which mentioned Monjar were given to Mr. Cannon for review and he was to bring them back. Miss Monjar told me that she did sign some articles, and I know of no one else.

Trial Examiner Batten: That is the thing we want to know, whether their name appears anywhere as writers or staff representatives.

Q. (By Mr. Cannon): What about 1942?

A. I checked through 1942 and was unable to find any signed articles. I think I found one letter signed by a person who was not on the Cannoneer staff, but most of the articles that I found were not signed. That is what I found, but you have some that were taken out of our files that I haven't seen lately.

Mr. Ryan: Miss Dunks, with respect to the type

(Testimony of Judy Dunks Wilby.)

of publication, the Cannoneer is a regular publication by the company, and the C.E.A. News was a regular weekly publication by the C.E.A. Did the C.I.O. publish any such regular publication that could be referred to as the News over this [1393] period from 1943 up to 1945?

The Witness: No, not to my knowledge.

Mr. Ryan: —for distribution in that plant, that is the Cannon plant.

The Witness: No.

Mr. Ryan: No further questions.

Q. (By Mr. Cannon): But you had during that period published and distributed hundreds of bulletins?

A. I wouldn't say hundreds, but from looking in the files, I would say that is a part of that period we distributed some bulletins, at least.

* * * *

Mr. Ryan: Mr. Examiner, yesterday when we were introducing papers for these various cases, formal papers in various cases, at that time I was having the petition typed in Case 21-R-1354, which was a petition filed on June 9, 1941, and I think we reserved an exhibit number for that.

Yesterday I introduced the order of Mr. Walsh dismissing protest of the conduct of election.

Mr. Cannon: That was the 67 series.

Trial Examiner Batten: What case was that?

Mr. Ryan: 21-R-1354. This is the first "R" case. That was the 67 series, I believe. [1394]

Trial Examiner Batten: 67-A.

Mr. Ryan: Board's Exhibit No. 67-B was marked, and that was the order dismissing protest of the conduct of election, and I will now ask that Board's Exhibit 67-A be marked now.

(The document referred to was marked as Board's Exhibit No. 67-A, and was received in evidence.)

* * * *

ASA S. WILCOX,

a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

* * * *

[1395]

Q. (By Mr. Ryan): Well, looking at Respondent's Exhibit 2 in the first paragraph where they list some names there. Can you explain about those, whether they were all terminated as a group, or pick out those that were terminated as a group?

A. Vivian Sullivan was terminated, Monna Nye, Joan Lawrence, William Youngberg and Erma Evanstad.

Q. Who?

A. Erma Evanstad. Louis Tournie was not terminated at that time and neither was, to the best of my memory at the moment, Donald M. McClellan.

Q. How many did you mention?

Trial Examiner Batten: That is seven.

Q. (By Mr. Ryan): Do you have a recollection on McClellan as to how it came about that he was not terminated?

(Testimony of Asa S. Wilcox.)

A. I do not. I would have to look the record up on that.

Q. Well, would you do that at noon, Mr. Wilcox, and bring in the record on Mackey, I mean on McClellan and on Tournie, Louis Tournie? [1396]

A. Louis Tournie resigned of his own accord some months later.

Q. Would you bring the record on him and also on McClellan?

A. Yes. You mentioned previously Bernard Mackey, but he is not on this list. Oh, yes. I will have to look up on Mackey as well as McClellan.

Trial Examiner Batten: You didn't say anything about Ada Lish and Eloise Hunt.

The Witness: I believe Ada Lish was terminated at that time in that group.

Mr. Cannon: Bring her card in anyway.

Trial Examiner Batten: In other words, what I want to know is what people's employment was terminated as a result of this correspondence by the respondents.

The Witness: On June 9?

Trial Examiner Batten: On any date as a result of this action of the C.E.A.

The Witness: Those that were terminated were all terminated on that one day.

Mr. Ryan: I think it was the 12th that they were actually terminated on according to their testimony.

The Witness: The 12th, that was several days later.

Q. (By Mr. Ryan): Could you bring the records on those persons at noon?

A. I will bring them all in this afternoon. [1397]

* * * *

Mr. Ryan: Mr. Examiner, I believe just prior to our noon recess I was discussing the Cannoneer and the C.E.A. News and the simultaneous appearance on their staffs of certain persons that I named in the record. I don't know whether the record is clear on that. Will counsel stipulate on that?

Mr. Cannon: I will take his word for it, if Mr. Ryan so states, that he has examined the records.

Trial Examiner Batten: Have you examined them? Counsel said that if you have examined them, he will accept them.

Mr. Ryan: Yes, sir. And another thing, Mr. Examiner, with respect to Florence Maynard—she is in the Women's Army Corps and she is, I think, stationed at Des Moines, Iowa, and she was not available for this hearing. Also, that Gus Palm is in the Merchant Marines, or at least he is in some branch of the service, either in the Merchant Marines or the Military Service, and he is overseas.

Mr. Cannon: I will stipulate as to the correctness of those statements, and also we have a like stipulation that Ned Mandella is likewise in the service and, therefore, unavailable.

* * * *

[1399]

Trial Examiner Batten: Respondents' Exhibit No. 37 will [1411] be received.

(The document referred to was marked as Respondents' Exhibit No. 37, and was received in evidence.)

* * * *

[1412]

Mr. Cannon: I have here this document, which has been marked as Respondents' Exhibit No. 38-A for identification, being a copy of the article of incorporation of Cannon Employees' Association, the original of which was submitted to the Examiner yesterday, and also Respondents' Exhibit No. 38-B for identification, which is certificate of amendment of articles of incorporation of Cannon Employees' Association, the original of which was submitted to the Examiner yesterday, which I would like to offer in evidence at this time.

Trial Examiner Batten: Any objection?

Mr. Ryan: I have no objection.

Trial Examiner Batten: They will be received.

(The documents heretofore marked as Respondents' Exhibits Nos. 38-A and 38-B, for identification, were received in evidence.)

* * * *

[1413]

Mr. Cannon: On the by-laws, which is Board's Exhibit No. 39, by-laws of the Cannon Employees' Association offered by Mr. Ryan but not identified, I will state on the record that we are not disputing the fact that they are the by-laws.

Trial Examiner Batten: In that case, I will receive Board's Exhibit No. 39. That is one of the ones that I have not received. Mr. Ryan stated in the record that they had been turned over to the Board by one of the officers of the C.E.A. at the time the investigation was made, if you recall.

(The document heretofore marked as Board's Exhibit No. 39, for identification, was received in evidence.)

* * * *

[1419]

Trial Examiner Batten: Suppose I show you what my records are. Board's Exhibit No. 8 was not received according to my records.

Mr. Ryan: I now offer it.

Mr. Cannon: What is it?

Mr. Ryan: It is a bulletin from James H. Cannon, dated June 18, 1941, addressed to the employees in regard to the contact committee of 1941.

Mr. Cannon: No objection.

Trial Examiner Batten: It will be received.

(The document heretofore marked as Board's Exhibit No. 8, for identification, was received in evidence.)

[Printer's Note]: Board's Exhibit No. 8 is set out in full at page 661 of this printed Record.

Trial Examiner Batten: Board's Exhibit No. 24, which was the list of checkoffs, the list of dues paid by the respondents to the C.E.A.

Mr. Cannon: We furnished that. No objection to that.

Mr. Ryan: I offer it.

Trial Examiner Batten: It will be received.

(The document heretofore marked as Board's Exhibit No. 24, for identification, was received in evidence.)

Trial Examiner Batten: Board's Exhibit No. 30?

Mr. Ryan: It is a speech by L. George.

Trial Examiner Batten: That's right, August 26, 1941. [1420]

Mr. Cannon: Well, I don't think it is material.

Trial Examiner Batten: Was that the radio talk?

Mr. Ryan: I offer it in evidence.

Trial Examiner Batten: I think it should be received because it was referred to in the record frequently.

(The document heretofore marked as Board's Exhibit No. 30, for identification, was received in evidence.)

Trial Examiner Batten: Board's Exhibit No. 44 was the Cannon Employees Recreation Association card. Board's Exhibit No. 45 was an open letter of the U.E. to the employees dated May 26, 1943.

Board's Exhibit No. 46 was a notice of hearing and complaint for expulsion, suspension or reprimand.

Board's Exhibit No. 47 was a bulletin from the U.E., dated June 8, 1943.

Mr. Ryan: It is a bulletin containing the letter to the Board of directors of the C.E.A. by the U.E.—

Trial Examiner Batten: Stating that the undersigned will not appear for the hearing.

Mr. Cannon: I have no objection to that.

Mr. Ryan: I offer Board's Exhibits Nos. 43 through 47.

Trial Examiner Batten: Well, 43 was rejected. Board's Exhibits Nos. 44 through 47, inclusive, were not offered and not received. [1421]

Mr. Ryan: I offer Board's Exhibits Nos. 44 through 47, inclusive.

Trial Examiner Batten: I will receive them. They were identified.

(The documents heretofore marked as Board's Exhibits Nos. 44 through 47, inclusive, for identification, were received in evidence.)

[Printer's Note]: Board's Exhibits Nos. 45 and 47 are set out in full at pages 694-695 of this printed Record.

Mr. Ryan: With respect to Board's Exhibit No. 44, I ask at this time a waiver to produce a duplicate.

Trial Examiner Batten: I stated in the record that a duplicate will not be required, if it was offered.

Board's Exhibit No. 49 is notice of hearing, dated July 10, 1944. That was not offered.

Mr. Ryan: I offer it now.

Mr. Cannon: No objection.

Trial Examiner Batten: Board's Exhibit No. 49 will be received.

(The document heretofore marked as Board's Exhibit No. 49, for identification, was received in evidence.) [1422]

[Printer's Note]: Board's Exhibit No. 49 is set out in full at page 696 of this printed Record.

* * * *

Mr. Ryan: That is the letter of Gibson to Cafarel notifying him that he is being charged with an offense and that the trial is set for July 31.

Trial Examiner Batten: Board's Exhibit No. 56 will be received.

(The document heretofore marked as Board's Exhibit No. 56, for identification, was received in evidence.) [1424]

[Printer's Note]: Board's Exhibit No. 56 is set out in full at page 701 of this printed Record.

* * * *

ASA WILCOX,

a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified further as follows:

Direct Examination (Continued)

Q. (By Mr. Ryan): Do you have the records here now, Mr. Wilcox? A. Yes.

Trial Examiner Batten: Those are the eight people named in the original complaint?

Mr. Ryan: Correct.

Q. (By Mr. Ryan): Do you have with you termination records of the company on Louis Tournie? A. Yes, I do.

Q. And what does the record reflect in that regard? [1426]

A. The record shows that he resigned, dissatisfied, on June 18, 1943. The date of the termination was June 18, 1943.

Q. Do you have any other record on him, any statement as to why he was dissatisfied?

A. He was dissatisfied, I believe, along with some others and demanded his availability certificate, and was given it along with some other men at the time. I believe he was dissatisfied because

(Testimony of Asa Wilcox.)

he didn't want to belong to the union, or it had something to do with the union.

Q. He was dissatisfied because he didn't want to belong to the C.E.A.?

A. No, that is not right, because he was a tool maker and was a skilled man, and the company reserved the right in the case of that type of man that he wasn't replaceable.

Trial Examiner Batten: You mean it reserved the right in the contract?

The Witness: Yes, sir. It is in the contract.

Q. (By Mr. Ryan): Have you the other records on the rest of the people in that group?

A. You wish the names in order?

Trial Examiner Batten: Let's take Lawrence, first.

The Witness: What is the name?

Trial Examiner Batten: Joan Lawrence.

The Witness: Joan Lawrence was discharged on June 12 [1427] in that group per the agreement with the C.E.A. under Article 2, Section 1.

Trial Examiner Batten: Erma Evanstad?

The Witness: Erma Evanstad was terminated on the same day for the same reason.

Q. (By Mr. Ryan): The termination card reads, does it not, in the space which says "Give detail and reason for leaving," and I quote "Discharged as per request from C.E.A. according to Article 2, Section 1, as per agreement." Is that correct, Mr. Wilcox?

A. That is correct.

Trial Examiner Batten: Vivian Sullivan.

(Testimony of Asa Wilcox.)

The Witness: Vivian Sullivan?

Trial Examiner Batten: The same reason?

The Witness: Same reason.

Trial Examiner Batten: The same day?

The Witness: The same day.

Trial Examiner Batten: Monna Nye?

The Witness: Monna Nye, same reason and the same day.

Trial Examiner Batten: Ada Lish.

The Witness: Ada Lish for the same reason, same day.

Trial Examiner Batten: Eloise Hunt.

The Witness: Eloise Hunt, same reason, same day.

Trial Examiner Batten: Youngberg.

The Witness: His first name is Clarence. [1428]

Trial Examiner Batten: This says William.

The Witness: Well, William Clarence, I guess, same reason, same day. [1429]

* * * *

Trial Examiner Batten: Have you looked over the Board's Exhibits 73 and 74?

Mr. Cannon: I have looked them over. I object to them on the grounds that they are not material to the issue in this case at all, and the judgment or the findings of fact and conclusions of law without the complaint itself are meaningless.

Trial Examiner Batten: May I see them? Mr. Ryan is offering them in support of Mr. Armant's statement.

Mr. Cannon: I object to them on the grounds

(Testimony of Asa Wilcox.)

that they are immaterial, irrelevant and incompetent, and as not being proper in corroboration of the sworn testimony of the witness on the stand.

Trial Examiner Batten: Well, I will receive them for the purpose of showing that there was such a cause of action, and whether or not the judgment is in support of Mr. Armant's statement is a matter I will have to decide. Otherwise, I do not think they are relevant to the issue.

(The documents heretofore marked as Board's Exhibits Nos. 73 and 74, for identification, were received in evidence.) [1433]

* * * *

BOARD'S EXHIBIT No. 2

[Cannon Electric Development Company, Inc.,
Letterhead]

April 27, 1938

International Association of Machinists
Labor Temple
Los Angeles, California

Gentlemen:

In response to your communication submitted April 19th in the form of a tentative agreement we have the following comment to make:

Only about 20% of our employees could qualify as legitimate applicants for a trade union which your organization represents. The balance of the majority that you embody in your list represent men unskilled in any trade and to whom you cannot issue a card that means anything in any other industry as has been verified by experience in the electrical union under similar circumstances. This business does not represent a trade application but it is an organization built up by one man engaged in the production and marketing of his products. To build this business he had to work for over 15 years for less money than half of our crew are now getting. If statements of outsiders are any criterion to go by our men are now better treated and have more pleasant surroundings than a great majority of industrial plants. The company is carrying, at its expense, life insurance on every man employed over 90 days as protection to his family or dependents. We cannot see why a few disgruntled em-

Board's Exhibit No. 2—(Continued)

employees or the ambitions of an outside organization should be permitted to disrupt this company and if it comes to a showdown we know we can replace every man in the place with men of equal ability and in many cases more or at least equal loyalty with the men now employed without any increase in wages. In response to your list of items we would reply as follows:

Section 1

So far as we know a feeling of goodwill and harmony now prevails in our shop on the major part of the employees. We will meet at any time with three men selected by a majority of the employees, represented by a vote taken of the entire employment roll, to discuss anything pertaining to their employment, working conditions or any other matters that may apply. We will not recognize the machinists' union or any other organization for any further discussion until they have legally established their right to bargain. The list you submitted was satisfactory to the labor board agencies and ourselves as a basis for calling a meeting. It is not satisfactory to us to continue any further discussion until it has been established in the proper method prescribed by law, that is, a secret ballot taken in our plant where all employees have an opportunity to express their desire as to whom shall bargain. We are not concerned about who is a member of your union. We are concerned about what the majority of our employees desire and this will have to be

Board's Exhibit No. 2—(Continued)

established before any other bargaining is undertaken.

Section 2

Our minimum starting rate is now \$.50 per hour. We made a blanket raise, very expensive to the company, about one year ago, and have not received, in return, results commensurate with the increase. Due to the uncertain nature of our business, which six months from now may be of a totally different line of endeavor, we will not agree to any fixed rate of raise for a lapsed time. Raises will be based entirely upon a man's ability to perform, on the nature of the work, and the improvement he shows during the time of his employment. Compensation will be the fair rate as compared with available labor and other applications of a similar nature. We do not ordinarily have sufficient work to keep a tool maker busy at tool making. Our present activities have been of a promotive nature to endeavor to develop a new product that would give employment to our men when our present activities slack off. In view of the attitude that is apparently manifest we doubt very much whether we will undertake such a risk again and if pressed too far we will make it a policy to simply lay off men when work is caught up rather than try to promote new activities to keep them employed. Our minimum rate for a machine operator is \$.75, adjustable according to the nature of the work we have available and the man's ability to produce. It will continue to be this rate as we do not employ machinists. Our men are

Board's Exhibit No. 2—(Continued)

practically all lathe men in their activities in this plant.

Section 3

We do not contemplate any wage reductions but we do contemplate a reduction in the working force. One year ago the constant cry was made to discontinue overtime and increase the spread of employment. This we did with nearly a 50% increase in our force. We warned at the time that to take such action would mean a reduction in the force when the time came for turning out a smaller volume. We are fast approaching that time and we are going to reduce the force to normal without any attempt to spread work. When we reach a normal crew for this plant we will then spread the work up to a certain point, after which we will be obliged to again reduce employees to a point where the remaining men have sufficient income to maintain their families.

Section 4

We will not give preference to a member of the union, the Catholic church, the Protestant church or any other denomination. We will give preference to a man who has been laid off for lack of work if he has been previously employed by us.

Section 5

Smoking will be permitted for 10 minutes twice a day in certain designated areas of the plant. It will be prohibited at all times in the paint room and certain other locations as posted. Anyone violating this rule will be discharged.

Board's Exhibit No. 2—(Continued)

Section 6

No employee on an hourly basis will be granted a vacation with pay. Two days off a week, as allowed on the present working schedule, is ample time in California for the average worker. If he desires more time he can take it at his own expense by making proper arrangements with the superintendent. A vacation with pay is nothing but a camouflaged increase in pay per hour and apparently our employees are being cuttle-fished by an hourly rate argument without taking into consideration their annual income. Hourly rates appear higher in many applications where the men are hired and discharged to fit the work on hand. This plant has a universally good reputation for keeping its men steadily employed, which is the aim of the national political administration and should be the aim of the labor union instead of promoting the idea that they can blackmail higher wages out of an employer and then find that they are off more time than the increase in wages represents when they figure up the annual total.

Section 7

Our working week is now 5 days of nine hours. We do not anticipate working overtime in general production but the special nature of our work occasionally requires overtime for the filling of emergency orders over which we have no control. We expect the employees, under these circumstances to put in a reasonable amount of overtime, the exact

Board's Exhibit No. 2—(Continued)

amount of which could be mutually agreed upon, at straight time. We feel that we are entitled to this if we are going to attempt to keep the men steadily employed. If this is not granted we will lay men off when not needed and hire extra men to meet the increase requirements.

Section 8

We are not signing any agreement.

Section 9

All men using tools of the trade are now paid on an hourly basis with the exception of three who serve as sub-foremen and are on a weekly basis. Some changes have already been made as applied to these men and further changes are contemplated.

Section 10

The six holidays consisting of New Years, Decoration Day, Fourth of July, Labor Day, Thanksgiving, and Christmas are now being observed and will continue to be so observed.

Section 11

In case of a reduction in orders on hand we will lay off men until our crew reaches a normal number. This situation has been covered by preceding comment and the layoff is directly due to the increase made necessary to eliminate overtime. We intend to take care of our old employees and maintain a sufficient organization for normal operations by spreading time. If the business drops off abnormally low we will lay off further men as previously stated

Board's Exhibit No. 2—(Continued)

to keep the remainder on sufficient income to maintain their families and dependents.

Our past performance is sufficiently well known to establish confidence on the part of our loyal employees who have been with us a considerable period of time. If any man takes an attitude detrimental to the company's interest, or breaks the company's rules, he will be discharged without consulting anybody. We will not discharge a man for any violation that has occurred more than six days past, unless it is something that has not come to our attention. If we find that he has been dishonest or disloyal we will fire him if it is six months after the occurrence, providing we have not known of it previously. We have never discharged a man for illness or absence beyond his control but we demand that he notify us at the earliest possible moment that he will not be present to carry on his work. This comment covers section 12 also.

Section 13 applies to activities on your part.

Section 14

We employ no night shifts but would naturally give preference to a night man who desired to get on day work if a vacancy occurred.

Section 15

We do not make a practice of employing apprentices in the machine tool line inasmuch as our work is practically all lathe work and varies to such an extent that an apprentice is not desirable. However, we propose to work our assembly men into appren-

BOARD'S EXHIBIT No. 2

ticeships as opportunity offers, as an advancement to them. There will be no reduction in wages when such a shift is made as applied to the employee involved.

Section 16

You have deleted.

Section 17

We will meet with the three men appointed by a majority of the employees at any time they desire and consider any suggestion they have to make or endeavor to amicably adjust any grievances they may present.

In conclusion the writer would say that our employees as a whole are enjoying a better standard of living, more pleasant working conditions, and other beneficial surroundings than they have experienced for the most part in their past activities. A great many of them have new automobiles, some of them are buying new homes. It is beyond our comprehension why they desire at this time to bring on tragedy, which any undue activity will result in, but inasmuch as what we have done in the past year for their benefit does not seem to produce any lasting results there is no alternative except to bring it to a show down at the present time and conclude the matter definitely and for all times.

Very truly yours,

/s/ JAMES H. CANNON.

CANNON ELECTRIC

DEVELOPMENT CO.

BOARD'S EXHIBIT No. 3-A

May 6th, 1938

Mr. James H. Cannon
President Cannon Electric Development Co.
420 West Ave. 33
Los Angeles, Calif.

Dear Mr. Cannon:

After our conference Tuesday 3rd, your men met Wednesday 4th and decided, when they had heard what transpired between us, that at this time they would not press for time and one-half for overtime, vacation with pay or wage increases, but that not later than 60 days the whole matter would be reviewed. This decision was arrived at by secret ballot—the result: yes—34; no—0.

On all other clauses of the agreement, submitted to you, the men are 100% against accepting any compromise. We believe that in view of the fact that the men have been so liberal in so expressing themselves, that there should now be no obstacle to us reaching a satisfactory settlement.

An early reply from you will be appreciated.

Very truly yours,

JOHN QUEEN,
Business Agent.

JQ/lw

BOARD'S EXHIBIT No. 3-B

[Cannon Electric Development Co., Inc., Letterhead]

Mr. John R. Queen, May 11, 1938
Business Agent,
International Association of Machinists,
Labor Temple,
Los Angeles, California.

Dear Mr. Queen:

Your favor of May sixth received and we are painfully surprised to learn that 34 of our employees are not satisfied with conditions as outlined in our letter of April twenty-seventh. According to these figures, we apparently have 20 men who did not participate in this vote and who are evidently satisfied with their employment.

The Wagner Act, conceived as a protection for labor, is rapidly becoming one of the most flagrant mis-carriages of justice ever appearing on American Statutes.

The writer has always been in sympathy with labor as he has made his living with tools since he was 16 years of age and would welcome the organization of employees into a group, represented by an accredited committee, authorized to meet with the management to discuss problems of mutual interest or grievances. However, such a group should be representative of all employees and not be subject to domination of an ambitious few, motivated by self-interest.

This business was built over a long period of years of self-sacrificing and trouble on the part of the

Board's Exhibit No. 3-B—(Continued)

writer. Advantage was taken of him when he was ill and undergoing some heart rendering family troubles. However, he is back on the job, with both feet in the stirrups and intends to run the business. His grandmother, who pushed a hand cart across the plains to help build this western country, endowed him with sufficient "intestinal fortitude" to tell any outside organization, that tries to "horn in" and disorganize the workers, to go to hell.

This constant bickering is hurting business and has diverted our attention from the creation of new business; with the result that we are experiencing a very marked recession in our operations. We see no occasion to prolong the agony; so if the 34 men are still of the same mind, as indicated by you, we would suggest that they draw their time, at any time they may see fit, and not wait 60 days for the ultimate decision. We can operate, under present conditions, with the men who are satisfied and such additions as may prove necessary; which may be easily obtained in the present labor market. There are too many able mechanics who would be delighted to obtain employment with this organization to warrant wasting further time in discussing the formation of a clique that could dominate the operation of this business over the will of the management. The "loafing days" are over in this establishment and Mr. Cromwell has been given full authority to reorganize the plant, which is now in progress. It is our desire to take care of the older employees, from point of service, but it would appear, from your letter, that

Board's Exhibit No. 3-B—(Continued)

there is such a wide spread dissatisfaction that we, undoubtedly, will be confronted with a wider spread reorganization of personnel than originally anticipated.

Under these conditions, the 34 men to whom you refer, had better hold another meeting and decide definitely and quickly what they want to do.

Very truly yours,

/s/ JAMES H. CANNON,

CANNON ELECTRIC DEVELOPMENT CO.

BOARD'S EXHIBIT No. 5

Making Dreams Come True!

Messages to the Employees of Cannon Electric Development Co., and Cannon Manufacturing Corp. are published every little while as the spirit moves by James H. Cannon . . .

Notice to Employees,

Cannon Electric Development Company &
Cannon Manufacturing Corporation

With the enormous increase in personnel in our factory since January 1st (over 200%) we are suffering from employment indigestion, which I trust our new employees realize.

As some justifiable complaints have been reaching me, I suggest as a first expedient toward correction, the formation of an employees' contact committee, consisting of a contact man on each fore-

Board's Exhibit No. 5—(Continued)

man's shift who will receive in writing the suggestions and complaints of all persons employed in the group.

These contact men are to be selected from the workers by secret ballot, and are not to include any foremen or executives. Candidates should be selected, who in the opinion of the voter are best suited from a temperament, experience and ability standpoint and free from prejudicial convictions, rather than from purely a personal popularity view as their task will be a laborious one and they will have to be able to analyze suggestions in an intelligent manner so as not to flood the management with an avalanche of crackpot suggestions and petty complaints of no serious import.

To start this I suggest that we take ballots beginning Monday, May 26th, through the medium of a secret ballot slip containing on a perforated corner the employee's number. This number to be checked off on a register when voted and the number removed from the ballot before placing in the box.

The two men receiving the highest number of votes in each group will then be published as candidates for a run off vote providing the original vote does not give one person a majority of all votes cast.

The Employees' Contact Committee, after election will meet and elect from the personnel of the committee three men to act as an executive commit-

Board's Exhibit No. 5—(Continued)

tee to review the reports turned in by the contact committee individual members.

They will in turn consider the reports and pass on to the management such items as they consider worthy of consideration.

There will be considerable detail to this arrangement and the company will if it proves desirable furnish paid clerical help to help out and is willing to allow additional compensation to the committee members if the duties become burdensome.

The time of service of these committeemen can be set by rules established after the organization becomes effective.

I believe I am correct in the surmise that we are in an ideal position to establish a splendid fellowship among our workers if this plan is properly followed and honestly administered as we do not have the problems of the mass labor groups of the East.

By this system, which can become an affiliated activity of the Employees' Welfare Association every person can feel that his problems and interest are being represented by fellow workers of his own selection, who are not subserviant to any internal clique, nor dominated by outside influences, whose interests might be quite foreign to the personal welfare of our workers.

This committee, selected as it will be, by your own votes, secretly placed without coercion, will

Board's Exhibit No. 5—(Continued)

not be dominated, nor influenced by the management.

This business is my hobby, and having in 26 years attained the goal of one of the finest specialty factories in the United States, I am now desirous of accomplishing in the next 9 years the training and building up of one of the ideal employee groups of the country.

Some bankers and industrial tycoons will call me an altruistic visionary nut for entertaining any such hopes.

I have, however, employed people for over 30 years, worked with tools since I was 16 years old and I possess the courage to try things that many would fear to undertake. During these long years, much of the time I was overburdened with personal problems, lack of experience and money, so the past has not always been ideal nor have I always been in a position to give the proposition I have in mind a fair trial.

At the present, however, you have the opportunity of dealing with an institution that has no watered stock on which a market has to be maintained, no stockholders clamoring for dividends and no bankers putting on the screws to protect their investments.

The Corporation has no indebtedness except current bills and accrued payroll involved in the month of May.

Board's Exhibit No. 5—(Continued)

I have had the faith in our American future to reinvest funds on hand and borrow money personally and invest it in the phenomenal recent expansion that has created the jobs that two-thirds of you now hold.

To hold and obtain the business to maintain these jobs will require the best efforts of all concerned, and I believe I know enough about mass psychology to place justifiable faith in the fact that once you are convinced you are working to your own interest you will spare no effort to improve quality of our products, improve production methods, eliminate waste and expose drones and subversive employees whose actions are detrimental to the group welfare.

New inexperienced workers are for the most part a liability for the first 90 days to any institution and by July 1st one-third of our employees will be in this class and another one-third in process of graduating from it so the bonus for the nations birthday presents problems from a money viewpoint on the part of the management, but I'm going to make an investment in faith in you workers and pay you 5% in cash of the wages you have earned during the period you have been employed from January 1st, 1941, to July 1st, 1941. This is based on the assumption that we will maintain or better our present production for the remaining period.

We are faced with serious competition and the nation as a whole is honeycombed with subversive elements ready to strew wreckage anywhere or

Board's Exhibit No. 5—(Continued)

everywhere to make racketeering income or impair defense production, depending on the elements motivating them. They will resort to lies, libel, circulation of false rumors, force or coercion to gain their objective. Some activities are so crude they are glaringly self-evident, but they soon switch to skillfully adroit methods.

This company to make successful products must carefully analyze purposes of origin and use of the proposition presented to it, and to build the employee organization I vision, every worker will have to analyze the purpose and objective of all subjects and propositions placed before him, and determine whether they are for his welfare or whether he is being used as a tool for some others agrandisement.

We are nearing our total practical employment rolls, and if we can meet competition successfully to increase the business we must cover the increase by new tooling, new methods, and increased training and skill on the part of the workers.

This improvement can readily be obtained by the cooperation of all involved, by a united action to eliminate grievances and the adoption of methods and tools that suggest themselves to you from your observations and experiences . . its attainment will warrant increased wages.

I desire every sincere suggestion or complaint to be acknowledged by the committee regardless of merit and I will provide forms for a system to take

Board's Exhibit No. 5—(Continued)

care of this, and supplement it with a follow-up method on accepted suggestions or verified complaints to assure action.

We are bringing down to date our rules for republication so all employees will be familiar with same, and due to the expanded employment most of our employees do not know an agreement with the workers exists so I suggest the drafting of a new one.

We can start with a skeleton set-up establishing seniority, protecting the workers against "sacred cows" that can creep into any organization and assuring workers of holding their jobs as long as they work to the common good and perform the service for which they are paid in a satisfactory manner.

Your grievance complaints, if warranted, can form the basis of action for correction of existing unfairness if it has crept in during our expansion.

The business has grown to sufficient size to have available a group of experienced men to intelligently pass on suggestions for changes in methods for shift assignments, pay adjustments and shifting of employees activities to enable them to learn new things or place them where they are better suited for results.

I want the employees to feel that they will not be penalized by the management through personalities as long as they perform conscientious productive work.

Board's Exhibit No. 5—(Continued)

We can expect some "family" squabbles, especially while we are under such high pressure, but much of this can be forgiven or overlooked if it is not overdone or threatens the general welfare.

Our superintendent is here to maintain production and discipline and the foremen are here to assist him and keep the work moving. They are not expected to "slave drive" the workers, but they are to see that work is produced, as a business institution can not lift itself by the boot strap and we must produce results on a basis where we can get new business against competition.

The superintendent's force, however, will not tolerate insubordination which is a cause for discharge in any successful organization.

Our supervisory staff is not to be abusive to the help beyond reason, but you should expect some disciplining, which occasionally may be unreasonable as tempers are short when men are under pressure.

I realize that in some spots our men and methods are weak but we have corrective measures in mind and intelligent suggestions from any of you can broaden the scope of our projected improvement in this respect.

Don't sell Jim Cannon short.

JAMES H. CANNON.

May 20th, 1941.

BOARD'S EXHIBIT No. 6

BULLETIN

June 11, 1941

To the Employees of the Cannon Electric Development Company and Cannon Manufacturing Corporation:

Folks:

In view of the false statements constantly being made, inspired by ulterior motives, I believe it essential at this time to make the attitude of your Companies clear:

First, your Management has conclusive reason to believe that you desire to give the newly elected Contact Committee, representing 100% of the organization, an opportunity to organize and prove what it can do.

Second, I believe that you grant yourselves sufficient democratic intelligence to make your own decisions.

Based on these two presumptions, I desire to make clear the following statement of policy we have found it necessary to adopt:

We will meet with the Contact Committee and render all assistance possible to put our shop organization into productive shape, 60% green though it is.

We will consider every reasonable complaint or suggestion and remedy or adjust any condition to the best of our ability.

Should dissatisfaction occur with regard to the performance of the Contact Committee, we will re-

Board's Exhibit No. 6—(Continued)

ceive and advise with any other group of workers within our plant.

If results warrant, and I feel in my heart they will, we will raise wages as soon as our organization gets co-ordinated and produces results that warrant such action.

A normal study of the work you are doing, coupled with intelligent managerial direction, will enable you within an amazingly short time to speed up shipments without increasing personnel, that will justify wage increases.

It is solely a matter of weighing payroll against shipments and the answer is self-evident.

In view of the false representations that have been made and the betrayal of confidences that is constantly coming to our attention the Companies' Declaration of Policy is this:

We will co-operate with your elected Contact Group and do everything possible to make it a success.

We will meet with any group of employees who have something legitimate to present (and by legitimate, we mean constructive suggestions or complaints on which they feel the Contact Group has inadequately functioned).

We will receive any legal complaint through the shop committee of Lodge 311, International Association of Machinists, A. F. of L with whom we have a signed agreement that is continuous in effect until rescinded or altered by 30 day written notice by either party thereto.

Board's Exhibit No. 6—(Continued)

In view of the deliberate mis-statements that have been made and the false front that has been put on to you by organizations that have tried to take advantage of you, please be advised that:

You will not be penalized for joining or already belonging to any legitimate organization.

Neither can you secure or insure your employment by joining any organization, as your tenure in employment under the present Management is based solely on your ability to perform the work for which you are paid.

From this date on, therefore, the Companies will ignore any "demand", "requests" or coercive entreaties to recognize or to treat with any organization as a bargaining agent until such organization has gone to the Labor Board and induced them to conduct an election under the law, proving a majority support for the plaintiffs by secret ballot of our employees as a whole.

Please keep the fact in mind that as long as I operate this business my employees are going to work here of their own free will and they do not have to join any organization.

Stand up for your rights and do not pay dues to any institution against your own free will and choice.

/s/ JAMES H. CANNON.

BOARD'S EXHIBIT No. 7

Making Dreams Come True!

Messages to the Employees of Cannon Electric Development Co., and Cannon Manufacturing Corp. are published every little while as the spirit moves by James H. Cannon . . .

PLANS AND OBJECTIVES

I want all of the new employees to know the significance of the above title.

This business as you already perhaps know, is my hobby.

I want you to analyze the work you are doing and compare it with your past experience.

Are you earning your pay?

You can't squeeze blood out of a turnip and you cannot expect a continuance of pay checks for services you do not perform evidenced by a loss of approximately 60% of recent contracts on the "AN" line of plugs which, as soon as the present back-log is completed, will represent 80% to 90% of the available business.

We must stop this loss and to do so we have to establish reliable costs we can depend upon in placing bids.

You are working in one of the best equipped specialty factories in the United States and if we get licked it will be our own fault!

I made some quick money on our regular fittings due to the rapid expansion of the business wherein the overhead expense did not increase as rapidly

Board's Exhibit No. 7—(Continued)

as the sales volume and I passed a substantial part of it on in adjusted pay schedules.

Those conditions do not now apply and to maintain the present payrolls, we must meet vicious competition from workers trained in cheap "mass" production where cents are split in figuring costs.

Personally, I've never desired a lot of money but I never again wish to reach the point experienced in my past life where I could not borrow \$25.00 to keep the public utilities connected and I think I'm entitled to security in my old age in return for the 26 years I've spent building this business.

I worked in this town, when Bob and Helen (my oldest children) were babies, for \$90.00 per month and living costs were 16% higher than they are today. The first five years of this business I made less than that and in the next 15 years my salary climbed from \$50.00 to \$125.00 per week.

To put America on its feet, goods must be produced at a profit to establish income to support the tax burden with which we are now confronted.

Bob was 2 years old when I started this business and he has been trained in it and understands the problems involved. He represents the contact you need to get a square deal for he has inherited the characteristics that has built this business—Fundamental Honesty—which is the priceless ingredient that gives us the financial support to meet all demands when backed by over a quarter of a century of successful operation on my part.

I want you to be proud of the fact that you are

Board's Exhibit No. 7—(Continued)

a part of the Cannon organization and to do this, results must reflect your individual effort.

It's up to you—

1. You can join any organization that you think worthwhile without jeopardizing your employment.

2. You cannot slow down or stop our production without throwing people out of work permanently, as the business will first go to competition and secondly, the plant will undoubtedly be government operated, which none of us want, as political management is a hard master.

3. You were given the opportunity to work out your own destiny by intelligent selection of the contact men in your group—election being tabulated now.

4. This plant will never be operated as a “closed shop” by any organization as long as I own it.

5. No organization will dictate its policies from the outside unless the government takes it over.

In conclusion, just analyze the approaches that are made to you. You'll get the right answer in the majority of cases and you can well appreciate that you now have an opportunity to be a part of an ideal working organization as I'll listen to any reasonable suggestions and put into effect those that do not threaten the general welfare.

Don't sell Jim Cannon short.

June 3, 1941.

J.H.C.

BOARD'S EXHIBIT No. 8

[1c Postal Card]

Mr. James H. Cannon
P.O. Box 75, Station A
Los Angeles, California

Date.....,

Dear Mr. Cannon:

I desire to give the Contact Committee I have helped elect, an opportunity to function with a view to increasing production to make possible increased wages.

In so doing I expect it to correct reasonable grievances that are fairly presented from time to time.

It is understood that this expression in no way effects my membership in any trade organization to which I belong or which I may join.

Very truly yours,

Name.....,

Address.....

I have been employed by your organization since
..... Clock No.....

June 18, 1941

Employees:

In view of the mis-statements that have been made to you verbally and in bulletin form, I deem it advisable at this critical time to call for an expression

Board's Exhibit No. 8—(Continued)

of your desires to enable me to intelligently determine our course of action.

Considering the questionable origin of these false claims and accusations, I have felt they would destroy their effectiveness from your own knowledge of facts and for that reason I have not replied to the insulting statements.

At present, however, it is imperative that I know your individual desires.

I suggested the election of a Contact Committee 100% representative—which has been accomplished. It has erroneously been called a Grievance Committee which is not its primary purpose. Its purpose is to “work in” the new employees so they can efficiently produce and also correct grievances that are bound to exist in an organization expanding so rapidly.

Also its purpose is to improve operations from every angle in our methods, as a 5c per hour raise represents approximately \$400.00 per day and this money does not grow on alfalfa bushes.

I am enclosing a postcard enabling you to inform me if you so desire, that you first want the opportunity to work out your own problems in the manner suggested and that until this plan is found wanting in results you are not desirous of outside interference that could easily prove disastrous.

Understand that this in no way effects your membership in any trade organization to which you belong or may desire to join.

Board's Exhibit No. 8—(Continued)

With the proper majority of response it will prove beyond any question or doubt that you desire to work and be freed from constant harassing from any source.

I'm calling on you for an honest expression of your wishes, as I need all the energy I possess to continue the advancement of this business.

Kindly mark, sign and mail the enclosed card at once so I can guide myself accordingly.

Sincerely yours,

/s/ JAMES H. CANNON.

BOARD'S EXHIBIT No. 10

United Electrical, Radio and
Machine Workers of America
5851 Avalon Boulevard
Los Angeles, California

June 25, 1941

Att.: Mr. Carl Brant

Gentlemen:

Acknowledging your communication of June 24, the Grievance Committee you referred to does not represent a majority of our employees.

The employees have, however, elected a Contact Committee by a secret ballot of the employees as a whole and have assured me overwhelmingly of a desire to give the elected committee an opportunity to prove its worth.

Board's Exhibit No. 10—(Continued)

This committee has begun to function and has already re-instated a discharged employee to give him another chance. Your organization has membership on the Contact Committee which is working wholeheartedly for the welfare of all employees and you can rest assured that there will be no discrimination and that your membership will get fair and impartial treatment.

Your field organizers have been so impressively unfair in their public bulletins—in making false statements, distorting facts, blackguarding the Company and obnoxiously trying to promote dissatisfaction in a happy working group that I believe the majority of our employees have no more confidence in your organization and motives than I do.

For that reason, we are not meeting with you next week as you request or any other time until you have proven in an established legal manner that a majority of our employees desire you to represent them which is very evident at the present time they do not.

Very truly yours,

CANNON ELECTRIC DEVELOPMENT CO.,
/s/ JAMES H. CANNON,
President.

BOARD'S EXHIBIT No. 11

Local 1421 Electrical Radio Mche.

Affiliates C.I.O.

5851 Avalon Blvd.

Los Angeles, Calif.

July 3, 1941

Att.: Mr. Carl Brant, Field Organizer

Gentlemen:

Responding to your published letter of June 28, I am presenting a few pertinent facts.

I've piloted this business thru 26 riotous years, 15 of which were in abject poverty. I have built a loyal group of employees. They have been treated fairly and anyone in the "know" realizes that one year employment in our factory is "open sesame" in any aircraft factory in the southwest if the worker's nose is clean.

My older employees know full well they can join any union or not join as they see fit without jeopardizing their employment in my institution. They have signified in written overwhelming response that they desire the Contact Committee they have collectively elected to be given a fair and impartial chance to function. That is the expressed desire of a large majority of the people here employed and it will be the law as long as I operate the business.

I received your Mr. Elconin and Mr. Brant and in a friendly way, agree at their suggestion to receive recommendations for a line of procedure originating from a discussion on a fixed date. Instead of this, the next morning, a flamboyant bulletin appeared to the

Board's Exhibit No. 11—(Continued)

effect that Cannon had agreed to meet regularly with the C.I.O. which I did not. I stated that the Management would at any time consider the complaints of any individual worker or group of workers if they have a just cause for complaint and there was no reason why the C.I.O. could not be heard in an unbiased appeal at any time.

You two gentlemen did not keep your agreement. Instead you 'phoned that you were not prepared to meet the appointment and would do so the following week. This conflicted with the Directors' meeting, at the time you suggested, so you presented a written form of suggestions, that were on the face, merely a proposed procedure already undertaken by the employee elected Contact Committee and well under way.

Personally, my talent and available time as well as my physical endurance are well occupied with the expansion of this plant which had made possible the employment of $\frac{2}{3}$ of our present employees. This group is employed to the best of their ability in producing goods for the National Defense. You have taken upon yourselves the responsibility of accusing me of breaking my word. This plant and all its extensions were built on the spoken word of Jim Cannon without a single written contract and all bills have been paid as presented. My employees can at any time get a just and impartial hearing.

In the meantime, I'm calling your bluff—make good your charges of illegal actions or quit harassing

and trying to spread discontent among my employees. There is no need of paralleling the work of the present Contact Committee.

/s/ JAMES H. CANNON.

BOARD'S EXHIBIT No. 15

Making Dreams Come True!

Messages to the Employees of Cannon Electric Development Co., and Cannon Manufacturing Corp. are published every little while as the spirit moves by James H. Cannon . . .

To the Employees of Cannon Electric Development Company and Cannon Manufacturing Corporation.

Folks:

A pertinent presentation of facts at this vital time is of paramount importance to all of us.

Today I signed, within a year, the 41st and 42nd baby bonus check, representing a help to a new crop of American citizens, larger than my old normal crew of about 40, during the employment of which I was far more contented than I am at present.

One year ago this month, it taxed my courage to start the construction of Plant No. 2 and after doing so my intricate knowledge of trade conditions indicated that I had a "bull by the tail," the release of which would leave us in the dust of oblivion, so I was obliged to push forward and keep expanding which made possible the jobs of two-thirds of you now employed. You, for the most part, were glad

Board's Exhibit No. 15—(Continued)

to get these jobs or you would not have applied for them. In addition to this, I have shortened the wage advancement period and added many other benefits in expanded insurance coverage, assumption of all dues for the Employees' Welfare Association, plus the bonus which was a high hurdle to undertake with two-thirds new employees.

Your new Contact Committee is generously devoting its time in an effort to organize and to serve you in a true democratic manner and they have already bowled over the Management twice in reinstating employees. Give them a fair break and they will deliver you 100% service for they are your voice and are responsible to you only but will require a little time to become organized and experienced.

When I see the way the folks on the Employees' Welfare Committee work, it gives me a kind of watery feeling around the eyes for they never complain about long hours of detailed discussion required and their conscientious attitude about handling the welfare funds would lead you to believe they thought they had been entrusted with the Russian Crown Jewels of fabled time. I note five marriage gifts in the last month from the welfare fund. With 42 baby bonus paid in the last twelve months, we will need a lot of intestinal fortitude to face the future at five weddings a month!

Kindly realize that when you are a part of one of the miracle organizations of America, everything cannot be perfected overnight! This business was

Board's Exhibit No. 15—(Continued)

not built on "luck" but opportune circumstances under a Management that knew how to use them has helped. I have informed your managing executives that this is no longer a "one man" institution and successful operation is dependent on the collective knowledge of our older employees with the collaboration of those newly acquired who show tangible thinking ability. We must hold the confidence of the employees, manage the business to eliminate waste and meet competition. Anyone with enough deductive thought to get anywhere in this chaotic world will realize that an institution like ours which has shown results, miraculous in modern times, is bound for a time at least to be harrassed by inefficiencies, abuses and most of all the other petty charges that can easily be pointed out. On the other hand, you have your Contact Committee at work to straighten out details and get you a fair representation.

I want you to realize I have only limited human endurance and to keep us out of the hands of the Investment Bankers, requires all of the talents and energy I possess. I desire a little time to think of new ideas as an understructure to keep as many employed as possible when the "bubble" breaks.

Primarily, I wish the Contact Committee to collaborate on a set of rules and regulations for a start which will result in the issuance in the immediate future of a book of rules to let you know the preliminary law established to assure continuance of your employment. I suggest a women's auxiliary to advise Nurse Walthall in the presentation of the

Board's Exhibit No. 15—(Continued)

women's problems within the organization which she in turn will follow at the Committee meetings. The Committee should co-operate with the Superintendent under the Foremen group in segregating job standards. By that I mean, it is impractical under the present nebulous plan to carry blanket raises based on time of employment. We must analyze jobs and set pay on results obtained, putting a "top" on less skilled lines and provide promotion at higher pay to more productive lines, for there is no logic in penalizing ability to drag mass inefficiency. Labor cannot get pay it does not earn for any secured length of time.

Getting this far with only a ninth grade school education, don't you think my suggested ideas are worth a fair trial?

Don't rock the boat—

/s/ JAMES H. CANNON.

JHC:EJ

BOARD'S EXHIBIT No. 18

[Cannon Electric Development Co., Letterhead.]

May 8, 1942

Mr. Harry Bridges,
Regional Director for the State of California CIO,
c/o United Electrical, Radio and Machine Workers
of America,
5851 Avalon Blvd.,
Los Angeles, California.

Dear Mr. Bridges:

Your letter of April 24th, in which you mention the change in times and policies, received.

Painting the spots off a leopard does not alter the conditions of its past or assure the future. In view of the opinion of those qualified to pass judgment, the disastrous and unwarranted strike of the long-shoremen of several years ago cost the western group of these, our United States, more money than the great Mississippi Valley floods during the same period and was absolutely unjustifiable.

Your electrical division tried to take my little company like Hitler took the Low Countries. First by Fifth Column methods of infiltration and then by force when our defenses were weakened by large additions of new help who did not know what it was all about.

This was typified by the remark of one worker who stated that it was the first job he had ever held and that, if by joining something he could get fifty percent more money, he was for it.

Under the restrictions of the prevailing interpre-

Board's Exhibit No. 18—(Continued)

tation of the labor laws we were obliged to remain tongue-tied while we were being black-guarded with racoub band wagons, dirty yellow bulletins, which did not adhere to facts and making false promises. This extremely flagrant attitude on the part of your representatives produced the results so surprising to your ex-communist, Mr. Brant. They were able to coerce and intimidate workers to join your union to maintain their peace of mind but when it came to a secret ballot, the employees exercised their democratic rights and expressed their true wishes, losing for you the only consent election in the United States of America of the UER, to the best of my knowledge, and the result was super induced by your own tactics.

I have been a worker all my life and a friend of labor and labor has been a friend of mine. The contract we had with the A. F. of L. was existant at the time your cohorts besieged our gates. We treated our help so well that they all quit paying dues to the A. F. of L. and it was only through the influx of new employees that you were able to get a foothold at all.

Our employees listened to the words of self-praise your institution issued about the wonders they had accomplished in an adjoining brass foundry. They have seen this foundry disintegrate and the owners sell out at a price that only save them six years wages in return for their lifetime of work, at the purchase price. Since then they have seen the employment dwindle to less than 25% of those originally employed before you began your activities and these

Board's Exhibit No. 18—(Continued)

are now employed largely through work we are able to sub-let to them.

We are now able to speak in self defense.

Any subversive moves to molest this plant will meet with an accounting to the collective front of the United States Army, Navy, Air and Signal Corps. There will be no "push-over" at this plant.

I trust from the bottom of my heart that you "have got religion", applying to the times, and that you intend to devote your efforts to the war work.

Our little group now have in their hands means of expressing and representing themselves on a basis that is thoroughly democratic for those involved and I am confident that they are loyal and well meaning. We know we have their loyalty and will receive the benefit of their best endeavors. They know I have implicit faith in them.

Under the circumstances, you and I have nothing in common to discuss, and the limitations of my available time does not warrant an interview.

Very truly yours,

/s/ JAMES H. CANNON,

President Cannon Manufacturing Corporation.

BOARD'S EXHIBIT No. 19

[Cannon Electric Development Co., Letterhead.]

May 29, 1942

Dear Folks:

I do not claim to be psychic but I sense a spontaneous "On To Victory" feeling in the plant that cannot be expressed in words.

I think and believe that you realize I am not fooling or bluffing in the attitude I have assumed that the only consequential consideration is the movement of goods, on the worn out reiteration—"Out the Front Door."

I am not a Henry Ford, with untold millions in reserve, to back a belief. To look the payroll in the eye, twice a month, I have to ship enough goods to bring back the wherewithall to pay it, regardless of any personal prejudice or belief on my part.

Somehow I seem to be backed by a Guardian Angel that guides me to do the right thing, at the correct time.

I raised wages before they became frozen but I believe the latter action will have no limiting effect on the voluntary desires of management. In other words, there will be no opportunity for blackmail by labor against management in war industry and I do not believe there will be any restraints on management for paying for proven superior production.

I am very proud of the record you have made against predicted disaster. April was our biggest month and May will surpass it.

Stormy times are ahead, because we did not have

Board's Exhibit No. 18—(Continued)

the co-ordination of vision, for which the plant was famous when I ran it myself, made the estimates and promises and saw that they were fulfilled. It simply grew over our heads, but we now know what is wrong and we are doing our level best to pick up the missing sources of supply, bridge the gap and get back on the established Cannon reputation for responsibility.

War is Hell, as General Sherman so aptly said, during the Civil War. You have seen some of the Hell start to break.

We are going onward with ever increasing support to the war effort, regardless of whose pastures are trodden over.

I tossed my all into the war effort and beyond the "Lost Horizon" I am looking for a way to employ as many as possible of you when the bubble bursts.

My "pen-pal," Harry Bridges, has received his last letter from me. These eagle-beaked foreigners, dis-enfranchised ex-convicts and racketeers are on their way out of American labor leadership. American labor is entitled to its just dues and I desire to help them in obtaining their just deserts.

Just keep plugging for Uncle Sam and you will have no just cause for regret is the written promise of,

/s/ JIM CANNON.

BOARD'S EXHIBIT No. 22

Making Dreams Come True!

A Message to "Cannoneers" from James H. Cannon

November 3, 1942

Dear Gang:

A letter captioned "Labor needs Capital—but Capital needs Labor most" came to my attention tonight. Accompanying this were three of my previous letters, copies of which are attached. This reminds me of an episode of the last war.

A private had, by some infraction of rules, flagrantly insulted a general. The general said, with a twinkle in his eye, "It's all right, son, but don't try it on a second lieutenant!"

The letter was defamatory and insulting.

Be that as it may, after re-reading my three letters, I am inclined to believe the author is sincere in his own heart, but has been mislead and used as a tool for propaganda.

I am going to re-issue these three letters that were used. They express my heartfelt desires.

Everyone has a right to his own opinion or these would not be our own United States.

On the other hand, no individual should appoint himself as the "Voice" of one of the most loyal crew of workers in America. Neither should one black-guard the head of the institution that feeds him with

Board's Exhibit No. 22—(Continued)

a circularized letter to the employees before the accused party has heard the complaints and been given an opportunity to defend himself.

We are in a total war and all I am interested in is, Winning It.

In April, 1939, the Cannon Manufacturing Corporation and the Cannon Electric Development Company had a combined payroll of approximately 80 employees. Roughly, 70 manufacturing and 10 selling and publicizing our products, including accounting and office detail.

I was designing all of our products, utilizing at that time, 33 years of experience in the electrical business, with 24 years behind me as the head of my own business, started as the Cannon Electric Development Company.

At the end of the first 3 years, on my own, I was penniless and \$7,000.00 in the hole. Did I quit? No! I borrowed \$100.00 and built a shed in the back yard and kept going. I nearly starved for the first 15 years. I told my creditors I was broke, but if they would not shut off my credit, I would pay every month for current purchases and make up the balance of arrears as soon as possible. I did—paid off every cent, including out-lawed debts.

Jim Cannon has never broken his word to anyone and it may be interesting to know that the plant you now occupy (Plant No. 2) was built originally, with all its extensions, without formal contracts and with only verbal okeys. This has made possible the in-

Board's Exhibit No. 22—(Continued)

crease in employment from the original 80, in April, 1939, to the enviable number of people we now employ.

Being a "one-man" business at that time, it is impossible to visualize our accomplishments to date.

My 9th grade education gave me a start and 36 years in the electrical business, principally on specialties, gave me an analytical mind.

We are now out to win the war, even though we are not, at present, doing as well as we might hope.

The sixth paragraph of captioned letter can well be answered by the statement, on my part, that when the business changed from "one-horse" to production, I was dropped into one of the most abysmal holes in history.

It was my practice to estimate the jobs, make the quotations and promises of delivery. The business was built on my personal control of these items, supported by the old crew to produce the goods after I had determined the facts.

We seldom broke delivery promises because my "one-horse" crew could keep in touch with requirements. If we had made a promise, I would personally go down town and obtain missing items.

Back to the abysmal hole! When business in aircraft plugs knocked all of my long laid plans for specialty marketing into a cocked hat, I found I had

Board's Exhibit No. 22—(Continued)

one of two choices—sell out a minority interest, with enough return to retire—or risk all.

I decided to risk all, and the 3 letters attached to the defamatory publication, outlined my principles.

When we changed from a one-man organization into quantity production, beyond my conception, I found myself faced with the dilemma of not having trained supporting executives to fill in. Frankly, I know nothing about quantity production, but I do know that when we expand so rapidly the “abysmal hole” dawn near became the “black hole of Calcutta” and we were on the verge of sinking.

You, who have been here for the last year can realize how inefficient our performance was when you came in “green” and found some of the foremen could not answer your questions.

The propaganda is false in its inception. I am merely laying the facts before you to give the opportunity to the loyal to judge for themselves.

Sincerely,

JIM CANNON.

Board's Exhibit No. 22—(Continued)

May 12, 1942

Re-printed 11-3-42

Folks:

In the middle of Sunday night, I broadcasted twice on the speaker system to clear up some rumors that are prevalent in the factory.

Outside of being the best "Plug" factory in America, we outshine them all in rumors.

I want you to understand, individually and collectively, that there is no contemplation of a general shake-up in our personnel. There are bound to be some changes in getting a "streamlined" Management. Also, we can't pay 75c an hour for 40c work, if we expect to stay in business. This is not your fault as many of you have come in here new—and have done the best you could with the instruction and facilities available.

We have employed what is considered the best firm of industrial engineers in America to straighten us out because the business grew over our heads.

There are no changes contemplated as far as the elimination of our personnel is concerned outside of the fact that after they have been assigned the duties, if the employee does not wish to accept the assignment, we will endeavor to switch him to something else more suitable.

We propose to correct the inequalities that exist in foremanship and general management wherein the worker gets more money than the foreman, who is supposed to be supervising him. We are going to

Board's Exhibit No. 22—(Continued)

pay good salaries; we are going to show them how to do the work, and show the workers how to do it.

We expect the foreman in charge to see that you workers produce. I know that it is your intention and heartfelt desire to do all you can to win this war and the only way we can win it, is to produce goods. The only way we can stay in business is to produce the goods faster and of a better quality than our competitors. I know you are willing.

We are going to place the instrumentality in your hands to enable you to get the results and the present wage advancement is taken on a blind lead, as a responsibility on the Management's part, to carry through to such standards. Once standards are established they will represent the present wage scale.

Those who perform superior workmanship, as quickly as it can be verified, will receive additional pay. In other words, when you turn the goods out the front door the money will come in again and we can pass it on to you.

I don't think any of you realize the load I have been carrying in order to expand this business in the miraculous way it has expanded. It is a mystery to everyone. It has taxed every physical and mental resource I had and I don't want it to get me down, for once I'm out of the picture, others will have to enter and the results might be disastrous.

The only thing incumbent on you is to produce goods and leave it up to me to see that you are compensated in return for your honest efforts.

JIM CANNON.

Board's Exhibit No. 22—(Continued)

May 29, 1942

Re-print 11-3-42

Dear Folks:

I do not claim to be psychic but I sense a spontaneous "On To Victory" feeling in the plant that cannot be expressed in words.

I think and believe that you realize I am not fooling or bluffing in the attitude I have assumed that the only consequential consideration is the movement of goods, on the worn out reiteration—"Out the Front Door."

I am not a Henry Ford, with untold millions in reserve, to back a belief. To look the payroll in the eye, twice a month, I have to ship enough goods to bring back the wherewithal to pay it, regardless of any personal prejudice or belief on my part.

Somehow I seem to be backed by a Guardian Angel that guides me to do the right thing, at the correct time.

I raised wages before they became frozen but I believe the latter action will have no limiting affect on the voluntary desires of Management, in other words, there will be no opportunity for blackmail by labor against Management in war industry and I do not believe there will be any restrains on Management for paying for proven superior production.

I am very proud of the record you have made against predicted disaster. April was our biggest month and May will surpass it.

Stormy times are ahead, because we did not have the co-ordination of vision, for which the plant was

Board's Exhibit No. 22—(Continued)

famous when I ran it myself, made the estimates and promises and saw that they were fulfilled. It simply grew over our heads, but we now know what is wrong and we are doing our level best to pick up the missing sources of supply, bridge the gap and get back on the established Cannon reputation for responsibility.

War is Hell, as General Sherman so aptly said, during the Civil War. You have seen some of the Hell start to break.

We are going onward with ever increasing support to the war effort, regardless of whose pastures are trodden over.

I tossed my all into the war effort and beyond the "Lost Horizon" I am looking for a way to employ as many as possible of you when the bubble bursts.

My "pen-pal," Harry Bridges, has received his last letter from me. These eagle-beaked foreigners, dis-enfranchised ex-convicts and racketeers are on their way out of American labor leadership. American labor is entitled to its just dues and I desire to help them in obtaining their just deserts.

Just keep plugging for Uncle Sam and you will have no just cause for regret is the written promise of,

JIM CANNON.

June 19, 1942—Re-printed 11-3-42

Folks:

Crooks and detectives observantly record small details.

Empire builders and "Get Rich Quick Walling-

Board's Exhibit No. 22—(Continued)

fords'' visualize a broad horizon. One with sincerity and belief—the other with a play up to his audience.

The sincere empire builders take a chance on their judgment and methods.

Jim Hill, who built the Great Northern Railroad across the American Continent, gave this advice to American Youth—"Save your first \$1,000.00."

Sir Donald Mann, who built the Canadian Pacific across a parallel route, to span the continent on more formidable frontiers across the Canadian border, stated that if he had waited to save a thousand dollars, the Canadian Pacific would never have been built.

The fact is—there is no rule of thumb method to win this war.

About twelve people in this organization know the general load I am carrying. Four possibly know most of it. One only, my son, Robert knows it all.

I desire to make clear to you my view of the future, immediate and later.

The Company will print and deliver a new and revised set of rules, in pocket size, that will include within its contents complete conformity with the union agreement. I want you to understand that a Company dominated union would be worthless and I also want you to understand that I was promised a representative set-up, which is now well underway, although somewhat behind delivery, like our plugs. What Jim Cannon wants is a medium of expression for all of the employees in the plant.

If we are going to rebuild the country, we have

Board's Exhibit No. 22—(Continued)

to shove the West, East and unless we do there will be some very sore spots in our economic scheme.

America was built by drifting West. We of the West are going to rebuild America by pushing the pioneer spirit of the West into the adolescent East.

Are you with me?

Sincerely,

JIM CANNON.

BOARD'S EXHIBIT No. 23

Making Dreams Come True!

A Message to "Cannoneers" from James H. Cannon

November 11, 1942

Dear Gang:

Throughout history every successful person or institution has had to be constantly on the alert to defend himself or itself against the slander, sabotage and jealous onslaughts of envious and ambitious persons and groups.

You are now employed in one of the miracle plants of the country, built from what would be, to most men, a financial failure at the start; and without cause or provocation the enemies are legion, and their motives are diversified.

Contrast the gloomy, dirty surroundings of the average mechanical plant with the place in which you earn your living.

Consider its central location and accessibility.

Board's Exhibit No. 23—(Continued)

Your cafeteria; where you can get wholesome and appetizing food at a low price, with a Company employed manager at no cost to you and all profits going to your recreation and enjoyment.

Consider our little hospital with its friendly and competent nurses on duty 24 hours a day to safeguard your health and protect your continuity of time on the job.

The free insurance benefits you receive, and the voluntary baby bonuses of \$50.00 each to help you over the trying times.

The kindly matrons in the ladies' rest rooms: ready to protect, assist, advise, and prevent abuses of your personal rights.

The competent military guard to protect the personnel and maintain your place of employment.

With but few exceptions you do not have to spend one-fourth of your working life getting to and from your place of employment; and none of you have to walk the major part of a mile to reach your working spot after you arrive at the plant.

You are not merely a grain of sand on a beach as felt by those employed in large plants—although our family has been growing rapidly and there is not the intimate personal acquaintance that used to prevail. We are still small enough, however, to maintain a spirit of comradeship and can mingle in groups at our bowling contests, dances and all manner of sports, selected according to your expressed desires.

Your monthly publication the "Cannoneer" gives you an opportunity for self expression and keeps

Board's Exhibit No. 23—(Continued)

you posted on current happenings in the Corporation and the Company.

I have verbally declared to you that I am thoroughly in accord with progressive labor laws.

A worker should have a sense of security if he performs his work sincerely and competently, and not be subject to the whims or personal likes or dislikes of a foreman.

He should have collective bargaining rights to correct abuses, and the right to strike if just complaints are not given due consideration by management.

On the other hand I do not believe our labor laws were ever intended to force working people to "buy" jobs; join organizations against their will; or be the tools of racketeers in applying pressure on other labor groups to submit to their demands.

Some politicians, far more interested in maintaining themselves and their cohorts in the public feed trough than they are in the Nation's welfare, have permitted and backed up some of the most atrocious miscarriages of justice and infringement of freedom's rights this Nation has ever experienced. But an apathetic public is awakening, due principally to the large number of relatives and friends who are giving their life's blood to preserve the country, and visualizing in terrifying contrast the crippling of the war effort by the unfair demands and actions of those fortunate enough to escape the military service, with its attendant death, misery and privation.

You have an organization in the form of a union

Board's Exhibit No. 23—(Continued)

that is supposed to be fully Democratic and to represent you.

A Company dominated Union would defeat its own purpose as has been demonstrated in many national instances, but an employees' union that is not representative and not democratic serves the interest of no one except the ones in the saddle.

I understand you have now passed judgment on a new set of by-laws that are liberal enough to enable you to govern your own affairs by representative majority backing, in which case we can accomplish even better results than those already obtained.

Personally, I am through with pussy-footing: Due to the political trend prevailing nearly 2 years ago I had to remain quiescent for about 8 months and submit to a deluge of obnoxious blackguarding bulletins, defamatory remarks over loud speaking band-wagons, treacherous propaganda from stooges employed within our own organization, without defending myself.

Since that time I have been publicly slandered by publication of perjured documents and pushed around to about the limit of human endurance.

In spite of this, with all of the lying rumors you have been confronted with, you have shown your faith by helping us push steadily ahead, which has given the racketeering elements trying to upset us, gangrene of the intestines.

Our job is to get the goods out to win this war.

Do not let anything distract you from this objective, for I can tell you very frankly that when the

Board's Exhibit No. 23—(Continued)

soldier boys come home there will not be enough rat holes or raid shelters to conceal the racketeers, ex-convicts and foreigners who have been exploiting American labor, from the vengeful wrath of our fighters.

Unless labor administration changes its methods abruptly, labor will lose every gain it has made after the boys get back, for the pendulum always swings back past the center.

If this happens, God help the recalcitrant politicians who find the rat holes already full of racketeers.

Keep pluggin' for Uncle Sam,

Sincerely,

/s/ JIM CANNON.

Bulletin NS-2

BOARD'S EXHIBIT No. 27

Making Dreams Come True!

Messages to the Employees of Cannon Electric Development Co., and Cannon Manufacturing Corp. are published every little while as the spirit moves by James H. Cannon . . .

Folks:

In view of the manifest unrest and the constant questions being asked from time to time, some pertinent cold-blooded facts are in order.

My life's ambition to establish one of the happiest worker's organizations in America was side-tracked by a threatened nervous break-down on my part

Board's Exhibit No. 27—(Continued)

coupled with the unexpected injection of America into the "War for Human Rights."

Our plans for organization and leveling out went completely over-board. I had to plunge in deeper than ever to meet the National Emergency and tossed into jeopardy everything I had acquired in 27 years of hard work to support my ideals. My health is partially regained but we are on the thin limb of operating on tax money, owed, but not due.

I am going to go full length with you, but if you let me down—God help all of us—for we will need it! The prime object of the Cannon Enterprises is to produce and ship goods for the defense of the United States of America and there is to be no "pussy-footing."

The day of labor-racketeering, without or within this plant, is definitely ended for the duration of the war emergency. We are under semi-martial law in our own little sphere and the national antics of politicians who "sell the Nation short" to keep their noses in the public feed trough is going to have little or no affect on our efforts. The Government wants Cannon plugs and what you and I are interested in—is how many go out the shipping room door every day.

I could quote to you the fabulous sums involved in the advancing of wage rate from six months at fifty cents an hour, requiring three years to attain a sixty cent maximum, when negotiations were started with your Association and provided for advancement from fifty cents to seventy cents in six

Board's Exhibit No. 27—(Continued)

months—anticipating results which I did not receive. Merely contemplate the amount of money involved and you can visualize purchasing a Treasure Island in Miami. You can overlook the \$3,600.00 Baby Bonus of \$50.00 per individual; the Welfare Association at \$679.50 per month; the Group Insurance cost to the Company of \$2,215.00 per month; the cafeteria with real food and the hospital with its friendly nurses. Also the convenience of accessibility to the plant against lost hours in transit as compared with the location of some of the war industries. These existing benefits account for the friendly spirit among the workers and the favorable comments we receive from visitors as to the apparent happiness manifest in our organization.

You and I well know we are not an aircraft plant. We have no "cost-plus" business. We are not offered all the work we can do at our figure. No Government loans have financed our expansion. We are bidding on an open specification for most of our business and price and delivery are the prime essentials governing our continuance in active operation.

It warmed the cockles of my heart, at a meeting the other day, to see some of our lady workers "tear the joint apart." "I had promised them top wages"—(their fingers were black with the shop grime). This is the spirit I want and space does not permit the angles on the Association and other items they brought up, with this one exception:

I think the Association has not been given credit for the work it has done. I was promised a full

Board's Exhibit No. 27—(Continued)

democratic organization of employees under which condition wonders could have been accomplished. The declaration of war upset the Association as much as it did the management. Neither one has obtained their objectives. However, the boys in the Association have fought your battle loyally and sincerely and should be shown some evidence of appreciation by you for their efforts. If they have been misguided it is up to you to correct their methods. You pay the dues.

From my standpoint I want plugs going out of the shipping room door and I'm going to get them.

We have lacked ways and means to the objective but we have them now to place in the worker's hands. I am tossing the "hot potato" directly in your laps.

When we pioneered and dominated the sound plug field, ten or fifteen different sources claimed credit for the Cannon Plugs. The fact is, I created and my associates built the entire line. We, of course, embodied changes suggested by field experience and the suggestions of engineers and technicians in the industry from time to time.

This Company's expansion and success is based entirely on its basic experience, ability, quality products and the adaptability to meet changing conditions.

Today war has wiped out all false fronts. We have the solid foundation to work from and as a collective group aim to give our best efforts to a common cause.

We have engaged competent engineers, among the

Board's Exhibit No. 27—(Continued)

best in America to train you in methods to produce results. I have given my word that by May 8th, we will have a tentative set-up to breach most questionable gaps in wages. You will receive wage adjustments at that time—but by the Eternal, they will be set for expected results.

This policy is final; no “sacred cows” are to be tolerated in this plant during the National War Emergency. This applies to everyone from my son, the General Manager, to the laborer who removes the trash from the back yard.

I am going to lay the cash on the line and you are going to move the plugs out the shipping room door.

Fair enough?

/s/ JIM CANNON.

BOARD'S EXHIBIT No. 37

Cannon Employees' Association
Suite 916 Garfield Bldg., 403 W. 8th St.
Los Angeles, California

July 31, 1942

Mr. Clarence Armant
3636 South Hope
Los Angeles, California

Dear Mr. Armant:

You are hereby requested by the Board of Directors, due to unpleasant circumstances which have arisen, to come to the Association office, Tuesday, August 4, 1942 at 2:00 p.m.

Kindly avoid any other unpleasantness by being present at this time.

Respectfully Submitted,

BOARD OF DIRECTORS,
/s/ NED MANDELLA,
President Cannon Employees Association.

BOARD'S EXHIBIT No. 45
OPEN LETTER TO WORKERS OF CANNON
AND THE C.E.A.

We, The Executive Board members of Local 1013, UE-CIO, reaffirm our stand that we will not join the C.E.A. We hereby call upon the honest workers of Cannon to stand with us—demand a democratic union within the plant. We will always fight a company-dominated outfit like the C.E.A. “We call your bluff”—“Board of Dictators”.

Fire us if you will—but be assured the UE-CIO with its membership of 500,000 workers will stand behind us and all its power will be used to bring every governmental agency into the picture to once and for all bring democracy to the Cannon Employees.

/s/ LOUIS TOURNIE, F. S.

/s/ MARY DONOVAN TANKENSON,

/s/ ERMA A. EVENSTAD.

/s/ VIVIAN SULLIVAN.

/s/ MONNA M. NYE, V.P.

/s/ JOAN LAWRENCE.

/s/ WM. YOUNGBERG, R.S.

/s/ DONALD M. McCLELLAN.

United Electrical, Radio and Machine Workers of
America, Local 1013, 2683 Pasadena Ave., Los
Angeles, California. uecio—5/26/43.

BOARD'S EXHIBIT No. 47

ATTENTION

The following letter, which is self-explanatory, was sent to the Board of Directors of the C.E.A. today.

Board of Directors, Cannon Employees Assoc.,
215 West Ave, 33, Los Angeles, Calif.

Gentlemen:

The undersigned have been named as defendants in a complaint for expulsion, suspension, or reprimand, filed by the members of the Board of Directors of the Cannon Employees Association and have received notice of hearing in accordance with Article 8 of the By-Laws of the said Association. The By-Laws provide that any trial on charges shall be held before the Board of Directors "who shall be the final judge in all of these matters."

It is, of course, a fundamental principle that the accused may not be tried by their accusers. In effect, a trial pursuant to the charges here before the Board of Directors would be a kangaroo trial of no significance whatsoever. We do not propose to waste our time in going through idle motions. Therefore, and because the Executive Board does not have the right to trial on charges filed by its own members, we will not appear at the hearing on June 8.

Very truly yours,

/s/ Louis Tournie, F.S.	/s/ Donald M. McClellan,
/s/ Vivian Sullivan,	/s/ Erma A. Evenstad,
/s/ John Lawrence	/s/ Monna M. Nye, V.P.
/s/ Wm. Youngberg, R.S.	

United Electrical, Radio and Machine Workers of
America, Local 1013, 2683 Pasadena Ave., uccio
6/8/43.

BOARD'S EXHIBIT No. 49

NOTICE

To Herbert Caffarel, Florence Maynard, Lee Lawhon, Rachel McBurnie, Arnold Benson, members of Cannon Employees Association, Inc., and to David Sokol, Esq., and Charles E. Taintor, Esq., their attorneys:

You and Each of You Will Please Take Notice that on the 15th day of July, 1944, at the hour of 11 o'clock, a.m., thereof, a trial and hearing will be had upon the accusations and complaints hereto attached for the offenses set forth in the complaint and the accusations hereto attached and that at said time and place you are hereby invited and requested to appear with your counsel and to place before the Board your defense.

That said trial and hearing will be held at Wednesday Morning Breakfast Club, Sichel St. and Ave. 28, Los Angeles, California.

Dated this 10th day of July, 1944.

/s/ O. W. KRIEVALD,
Wednesday Morning Club,
220 E. Avenue 28.

To the Executive Board of the Cannon Employees Association, Inc.:

Members of the Cannon Employees Association, Inc., do by these presents make the following charges and complaints against the following members of the Cannon Employees Association, Inc., to-wit:

Board's Exhibit No. 49—(Continued)

Herbert Caffarel, Florence Maynard, Lee Lawhon, Rachel McBurnie, and Arnold Benson.

I.

The undersigned, Robert Jacobs, Betty Kindleberger, Beatrice Craig and Business Agent respectively of the Cannon Employees Association, Inc., do hereby charge and complain that the above named members of the Cannon Employees Association, Inc., did in violation of Subdivision 5, Article VIII of the Articles of Incorporation and By-laws of the Cannon Employees Association, Inc., "spread false reports maliciously, which were detrimental to the harmonious relations between the members of the Cannon Employees Association, Inc., and/or The Cannon Employees Association, Inc., and/or anyone who may have a contract with the Cannon Employees Association, Inc."

II.

That the above named members of the Cannon Employees Association, Inc., did conspire together and as individuals with the concert of action and did knowingly and maliciously spread false reports about the undersigned complainants which said false reports were detrimental to the Association and the Cannon Manufacturing Corporation and the Cannon Electric Development Company in their relations with each other; that the Cannon Manufacturing Corporation and the Cannon Electric Development Company did at all times mentioned have a contract with the Cannon Employees Association, Inc.

Board's Exhibit No. 49—(Continued)

III.

That the principal place of business of the Cannon Manufacturing Corporation, the Cannon Electric Development Company and the Cannon Employees Association, Inc., is in the City of Los Angeles, County of Los Angeles, State of California.

IV.

That the false reports above mentioned are hereinafter set forth specifically:

(a) That in the last week of May, 1944, Lee Lawhon and Rachel McBurnie did circulate a leaflet charging irregularities in the management of the Cannon Employees Association, Inc.; that said leaflet was false and untrue and was circulated by the said Lee Lawhon and Rachel McBurnie maliciously and for the purpose of spreading a false report which was detrimental to the harmonious relations of the Cannon Employees Association, Inc.

(b) That during the last week in May, 1944, Lee Lawhon did spread false reports and assert that the President and Business Agent were "a couple of thieving bastards."

(c) That at said time above referred to Rachel McBurnie and Lee Lawhon said that the President and Business Manager were comporting themselves as dictators and that one Al Tuttle, a director of the Cannon Employees Association, Inc., was a "company stooge."

(d) That Florence Maynard above mentioned, during the month of May, 1944, and prior thereto,

Board's Exhibit No. 49—(Continued)

did make remarks to the girls working under her that the President and Business Agent of the Cannon Employees Association, Inc., were dishonest.

(e) That on one occasion in the month of May, 1944, Florence Maynard discriminated against one Betty Pizzitola for the reason that said Betty Pizzitola asserted the President and Business Agent were not dishonest and were not thieves.

(f) That said Betty Pizzitola did file a complaint against Florence Maynard because of such discrimination.

(g) That on May 31, 1944, Florence Maynard did accuse President and Business Agent of being thieves and dictators.

(h) That on or about March 24, 1944, said Florence Maynard did accuse President and Business Agent of being a couple of crooks and referred to all the Board of Directors as being stooges for the Cannon Manufacturing Corporation and the Cannon Electric Development Company; and did at said time declare her intention of destroying the Cannon Employees Association, Inc.

(i) That Arnold Benson has on many occasions occurring during the months of March, April and May, 1944, referred to the Cannon Employees Association, Inc., as a company union and that all of the directors and officials of said union were inefficient, dishonest and incompetent in their intent.

(j) That many conferences during said time were held between Arnold Benson and Members of the Tool Guild with one another and with other members

Board's Exhibit No. 49—(Continued)

of the Association for the purpose of maliciously spreading false reports about the Directors of the Cannon Employees Association, Inc., and the officials thereof and for the purpose of spreading disharmony and discontent among the members of the Cannon Employees Association, Inc.

V.

That each and all of the above accusations were committed by the above named members and respondents hereto knowingly, maliciously and with knowledge of their falsity and were designed and intended to be, and were in fact, detrimental to the harmonious relation between the members of the Cannon Employees Association, Inc., and were detrimental to the harmonious relations between the Association and the Cannon Manufacturing Corporation and the Cannon Electric Development Company, which organizations had a contract with the Association.

Wherefore, the undersigned complainants pray that the Board of Directors expel and nullify and make void the membership of the above named respondents as members of the Cannon Employees Association, Inc.

ROBERT JACOBS,
BETTY KINDLEBERGER,
BEATRICE CRAIG,
RICHARD FRANKLIN,
Business Agent.

BOARD'S EXHIBIT No. 56

Cannon Employees' Association, Inc.

215 West Avenue 33

CApitol 6315

Los Angeles, California

June 29, 1944

Herbert Caffarel:

This is to notify you that you have been accused of the following offense:

“Spreading false reports maliciously, which are detrimental to the harmonious relations between members of this Association or between this Association and anyone who may have a contract with this Association.”

You will be tried on these charges in the manner provided by our CEA By-Laws on Saturday, July 1, 1944. Your presence is important to your defense. The proceedings will commence at 4 p.m. promptly and if you desire you may be represented by legal counsel. This matter is important as it may lead to your expulsion from the Association or to suspension or reprimand.

/s/ JOHN GIBSON,
CEA President.

BOARD'S EXHIBIT No. 58

To My Fellow Employees:

Saturday, July 1, 1944, I am to be tried in the manner required by the CEA By-Laws. I am accused of the following offense:

“Spreading false reports maliciously, which are detrimental to the harmonious relations between members of this Association or between this Association and anyone who may have a Contract with this Association.”

The above “crime” for which the CEA Board of Directors proposes to try me is my exposure of the two crooks, Richard Franklin and his cigar smoking stooge, John Gibson.

To me, personally, the loss of my job here at Cannon's would not be a hardship, since I had, before receipt of this letter, tendered my resignation to the Company for other reasons—but are you going to allow this unholy duo to continue to dictate to you and intimidate you with threatened loss of your job, if you dare to speak your opinion? Do you want a real Union or a Gestapo?

For myself, I want you to be the judges of my record here at Cannon's—not a jury of my accusers, whose verdict is already sealed.

I have served you during the past three years, without pay, as President of the CEA, 1943-44; as Co-Chairman (labor) of the Labor-Management War Production Drive; as Co-Chairman of the Cannonaiders; as Employee representative of Jim Can-

Board's Exhibit No. 58—(Continued)

non's Pension Plan ; as Vice-Chairman of the Fourth and Fifth War Loan Drives and as a member of the Cannon Electric Federal Credit Union supervisory committee, and I'll gladly stake this record of service to my fellow employee or to the Company as an Inspector against that of any of my accusers.

Some of the other victims of this would-be purge are: Rachel (Mac) McBurnie of Dept. 2, Joe Buffa, first class machinist, Dept. 1, both of Swing Shift and a half dozen others of the Day Shift.

What are your sons and husbands fighting for—the right of free speech—a democratic form of government—or that these two vultures of Labor may prosper and fatten at their expense and yours?

Think—before it's too late.

It Can Happen To You.

Sincerely,

/s/ FLORENCE K. MAYNARD.

BOARD'S EXHIBIT No. 62-A

May 26, 1941

James H. Cannon

Cannon Electric Development Company and

Cannon Manufacturing Corporation

3209 Humboldt Street

Los Angeles, California

Dear Sir:

The employees of Cannon Electric Development Company and the Cannon Manufacturing Corporation, in line with their rights under the Wagner Act, have elected a Grievance Committee for the purpose of taking up job problems and grievances for CIO members in your plant. This committee and myself, as representative of the United Electrical, Radio and Machine Workers of America, Local No. 1421, CIO, are desirous of meeting with you as soon as possible for the purpose of discussing grievances affecting our members.

The committee and myself would like to meet with you Thursday, May 29, at 2:00 p.m., at your office. If this is convenient, will you please notify me at the earliest possible date.

Sincerely yours,

CARL BRANT,

Field Organizer.

The following is the duly elected Grievance Committee:

Shift No. 1

1. Ivan Jenson, Automatic Screen Machine.

Board's Exhibit No. 62-A—(Continued)

2. John Hager, Finish Casting.
3. Syd Steinberg, Finish Casting.
4. Gus Palm, Drill and Punch Press.
5. Herb Ingals, Machine Shop.
6. Howard Archer, Die Casting.

Shift No. 2

1. John Collins, Finishing Casting.
2. Ray Filloon, Machine Shop.
3. Willard Palmer, Die Casting.
4. Art Korman, Drill and Punch Press.
5. Arthur Eddy, Paint Shop.

Shift No. 3

1. James W. Duncan, Finish Casting.
2. William Hull, Finish Casting.
3. Art Millette, Drill and Punch Press.
4. Morris Willderman, Finish Casting.

BOARD'S EXHIBIT No. 62-B

[Cannon Electric Development Co., Letterhead.]

May 28, 1941

United Electrical, Radio & Machine Workers
of America,
5851 Avalon Blvd.,
Los Angeles, Calif.

Attention: Mr. Carl Brant, Field Organizer.

Dear Sir:

In response to your favor of May 26th, relative to job problems and grievances, I am well aware that there are some minor ones that exist, and steps

Board's Exhibit No. 62-B—(Continued)

are now under way to correct same, and I believe that a large majority of our employees are fully aware of this fact.

With the enormous increase in the number of employees that we have added since the first of the year, combined with the high-pressure under which we have been obliged to operate, we have been unable to look into these matters as far as we would have liked to do. In the meantime, however, if any of our employees think they have grievances that cannot wait, they are at liberty to take them up with the International Association of Machinists, Lodge No. 311, at the Labor Temple, Los Angeles, who have a grievance committee, and with whom we have a signed working agreement.

Very truly yours,

/s/ JAMES H. CANNON.

CANNON ELECTRIC DEVELOPMENT CO.

BOARD'S EXHIBIT No. 72

[Western Union Telegram]

May 23, 1945

To: James H. Cannon, President
Cannon Mfg. Corp. & Cannon Electric Development
Co.

3209 Humboldt Street
Los Angeles, California

Please be advised that the contract entered into on April 10th, 1945, of and between the Mechanics

Board's Exhibit No. 72—(Continued)

Educational Society and your company is hereby cancelled and declared null and void.

Will you please take the necessary steps to effectuate this cancellation with the utmost expedition.

MATTHEW SMITH,
National Secretary of M.E.S.A.

RESPONDENT'S EXHIBIT No. 2

Cannon Employees' Association, Inc.
215 West Avenue 33
CApitol 6315
Los Angeles, California

June 9, 1943

Cannon Manufacturing Corp.

Dear Sirs:

This is to inform you that the Cannon Employees' Association has fairly tried the following named persons for various infractions of our By-Laws, found them guilty and duly expelled them from membership in this organization: Louis Tournie, Vivian Sullivan, Monna M. Nye, Joan Lawrence, Donald M. McClellan, William Youngberg and Erma A. Evenstad. As an additional cause for action these persons were also expelled for non-payment of dues along with Ada Lish, Eloise Hunt and Bernard Mackey. We expect that in accordance with our mutually negotiated and signed contract you will discontinue the employment of these persons within the next seven days or as soon thereafter as they may be replaced.

Respondent's Exhibit No. 2—(Continued)

From our thorough acquaintance with the workings of the plant we are confident that there will be no difficulty in replacing any of these persons with the possible exception of Louis Tournie. We know, and are certain that you cannot help but know that the interests of American war production in this plant will be furthered by the removal of Mr. Tournie from our midsts.

We will thank you for your prompt and sincere cooperation in this matter. Your employees expect you to act according to the provisions of our aforementioned agreement.

Sincerely,

/s/ J. A. GIBSON,
Secretary.

/s/ FLORENCE K. MAYNARD,
President.

RESPONDENT'S EXHIBIT No. 12-B

United States of America
Twenty-First Region
National Labor Relations Board

Case No. XXI-R-1354

In the MATTER OF CANNON ELECTRIC DEVELOPMENT CO. and CANNON MANUFACTURING CORP.

and

CANNON EMPLOYEES' ASSOCIATION.

CERTIFICATE OF RESULTS OF
CONSENT ELECTION

By agreement of all parties, the Regional Director of the Twenty-first Region, National Labor Relations Board, did hold an election on September 9, 1941, at the plant of Cannon Electric Development Co. and Cannon Manufacturing Corp. at 3209 Humboldt Street, Los Angeles, California, among all employees on the payroll of the Company as of July 16, 1941, including those employees who did not work during such payroll period because they were ill or on vacation and employees who were then or have since been temporarily laid off, but excluding engineering, clerical and supervisory employees and those employees who have since quit or been discharged for cause.

The results of the election were as follows:

Total on Eligibility List	703
Total Ballots Cast	675
Total Ballots Challenged	29
Total Blank Ballots	0

Respondent's Exhibit No. 12-B—(Continued)

Total Void Ballots	0
Total Ballots Not Counted	29
Total Ballots Counted	646
Total Votes for	
Cannon Employees' Association	370
Total Votes for United Electrical Workers, Local, 1421, C.I.O.	268
Total Votes for Neither	8

Unless objections to this report are filed within ten days after the receipt thereof, the Regional Director will destroy all the marked ballots in this election.

(Seal) /s/ WM. R. WALSH,

Regional Director 21st Region, National Labor Relations Board. Los Angeles, California.

Dated September 10, 1941.

RESPONDENT'S EXHIBIT No. 26

Cannon Employees' Association, Inc.
215 West Ave., 33, Los Angeles, Calif.

July 24, 1944

Cannon Mfg. Co., 3209 Humboldt St., Los Angeles.

Gentlemen:

This is to inform you that in a trial conducted according to our By-Laws, Florence Maynard and Herbert Caffarel have been expelled from membership in the Cannon Employees' Association.

We expect that you will act promptly in accordance with our mutual contract.

Sincerely,

By /s/ H. L. BRADY,

Chairman of Trial Board.

RESPONDENT'S EXHIBIT No. 27

In Reply Please Refer To 21:ASW/sk.

July 25, 1944

Cannon Employees' Association, Inc.,
215 West Ave., 33, Los Angeles, Calif.

Gentlemen:

We are in receipt of your letter of July 24, 1944, informing us that Florence Maynard and Herbert Caffarel have been expelled from membership in the Cannon Employees' Association, and asking for discharge of these employees in accordance with our mutual contract.

Please give us detailed and specific charges on which these people were tried and convicted for violation of your By-Laws.

Very truly yours,

CANNON MFG. CORP.,
A. S. WILCOX,
Personnel Director.

RESPONDENT'S EXHIBIT No. 28

Cannon Employees' Association, Inc.
215 West Ave., 33, Los Angeles, Calif.

Cannon Mfg. Corp., July 26, 1944
3209 Humboldt St., Los Angeles, Calif.

Gentlemen:

We have received your letter of July 25, 1944, requesting detailed and specific reasons for the expulsion from membership in our Association of

Respondent's Exhibit No. 28—(Continued)

Florence Maynard and Harbert Caffarel and our resulting request that they be discharged from the employ of the company in accordance with our mutual contract. We are hereby submitting the requested information.

Charges were brought against these two persons and several others by a group of employees on June 8, 1944. The charges were that the defendants had violated several sections of Article VIII of our By-Laws and particularly that section of Article VIII which reads as follows:

“Spreading false reports maliciously, which are detrimental to the harmonious relations between members of this Association or between this Association and anyone who may have a contract with this Association.”

Violation of the above quoted section of our By-Laws in a continued, wilfull and malicious manner is reason for reprimand, suspension or expulsion. The defendants were given a copy of the charges against them and were allowed all the time they desired to prepare their defense. Their trials were conducted in the Wednesday Morning Club, 220 E. Ave. 28, and all members who desired were allowed to attend the hearings. It was brought out during the trial that these two defendants had conspired to spread through the plant false rumors or irregularities and crooked dealings in the conduct of the Association. The books of the Association were brought to the hearing and no irregularities or

Respondent's Exhibit No. 28—(Continued)

crooked deals were exposed. It was further brought out that the defendants were past officials of the Association and in a position to know beyond any question of a doubt that the statements they were making had absolutely no basis in fact. It was further brought out that the ill will, discontent and general unrest created by their studied and deliberate campaign to spread malicious untruths had been injurious to production and to the morale of employees of this plant and members of this Association. Therefore, the Board of Directors of this Association acting by virtue of the authority vested in them by the By-Laws of our organization, voted to expel Florence Maynard and Herbert Caffarel from membership.

This Association has been certified by the National Labor Relations Board as a legitimate bargaining agent for all Cannon employees. This Association has at all times striven to maintain good relations with the company in the interests of continued production. We ask that you act promptly in this matter as there is widespread demand for such promptness throughout various departments in both plants. As you must surely know, considerable unrest has been created by the campaign of vilification conducted against us and directed in part by the two persons who have been expelled. It is our sincere hope that you are not a party in any manner to this campaign nor in sympathy with it. Last year we were compelled to expel several persons for libeling this Association as a "Company Union" and its Board of

Respondent's Exhibit No. 28—(Continued)

Directors as a "Board of Dictators". At that time, after considerable argument, you consented to act in accordance with the terms of our contract and dismiss those persons from your employ without resorting to lengthy and sometimes expensive process of arbitration. We are firmly convinced that the evidence in this case warrants similar action on your part at once. We invite you to study at length the court reporter's record of the trial proceedings. And we urge you, in the interest of continued good labor relations and uninterrupted production, to act with speed and dispatch in accordance with Article II, Section I of our contract.

Very truly yours,

CANNON EMPLOYEES ASSN.,
/s/ JOHN A. GIBSON,
President.

RESPONDENT'S EXHIBIT No. 29

Cannon Employees' Association, Inc.
215 West Ave., 33, Los Angeles, Calif.

March 16, 1945

Cannon Mfg. Corp. &
Cannon Electric Development Co.

Gentlemen:

On Tuesday, March 13th, the membership of the Cannon Employees Association voted to become members of the Mechanics Educational Society of America, Local 75. By the terms of their vote the

Respondent's Exhibit No. 29—(Continued)

M.E.S.A. Local 75 became sole bargaining agent for Cannon workers in all matters pertaining to hours, wages and conditions of employment.

In accordance with the wishes of our membership we have, by unanimous vote of the Board of Directors, dissolved the Cannon Employees Association. In line with this change of name and of bargaining rights we ask that the dues check for each month and for every month thereafter be made out to the Mechanics Educational Society of America. We also ask that you meet with us at your earliest convenience so that the newly elected officers of M.E.S.A. Local 75 may negotiate a contract with you on behalf of our members.

To avoid any doubt which may linger in your mind as to the sincerity of our membership in this matter we are now circulating bargaining authorization blanks for the M.E.S.A. Inasmuch as the National Labor Relations Act provides that every employer should bargain with the organization representing a majority of his employees we request at this time that you be equally sincere and straightforward with us so that this matter may be speedily concluded.

Sincerely,

CANNON EMPLOYEES' ASSOCIATION,
DON SCHLOEDER,
Secretary.

RESPONDENT'S EXHIBIT No. 30

Cannon Employees' Association, Inc.
215 West Avenue 33
Los Angeles, California

April 4, 1945

Cannon Mfg. Corp. &
Cannon Electric Development Co.

Gentlemen:

On Tuesday, March 13th, the membership of the Cannon Employees Association voted to become members of the Mechanics Educational Society of America, Local 75. By the terms of their vote the M.E.S.A. Local 75 became sole bargaining agent for Cannon workers in all matters pertaining to hours, wages and conditions of employment.

In accordance with the wishes of our membership we have, by unanimous vote of the Board of Directors, dissolved the Cannon Employees Association. In line with this change of name and of bargaining rights we ask that the dues check for next month and for every month thereafter be made out to the Mechanics Educational Society of America. We also ask that you meet with us at your earliest convenience so that the newly elected officers of M.E.S.A. Local 75 may negotiate a contract with you on behalf of our members.

To avoid any doubt which may linger in your mind as to the sincerity of our membership in this matter we are now circulating bargaining authorization blanks for the M.E.S.A. Inasmuch as the National

Respondent's Exhibit No. 30—(Continued)

Labor Relations Act provides that every employer should bargain with the organization representing a majority of his employees we request at this time that you be equally sincere and straightforward with us so that this matter may be speedily concluded.

Sincerely,

CANNON EMPLOYEES ASSOCIATION,
/s/ DON SCHLOEDER,
Secretary.

No. 12142

**In the United States Court of Appeals
for the Ninth Circuit**

NATIONAL LABOR RELATIONS BOARD, PETITIONER
v.

**CANNON MANUFACTURING CORPORATION AND JAMES H.
CANNON, AN INDIVIDUAL DOING BUSINESS AS CANNON
ELECTRIC DEVELOPMENT COMPANY, RESPONDENTS**

**ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

DAVID P. FINDLING,
Associate General Counsel,
A. NORMAN SOMERS,
Assistant General Counsel,
OWSLEY VOSE,
FREDERICK U. BEEL,
Attorneys,
National Labor Relations Board.

FILED

MAY 19 1942

PAUL P. O'BRIEN,

CLERK

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In the United States Court of Appeals for the Ninth Circuit

No. 12142

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CANNON MANUFACTURING CORPORATION AND JAMES H.
CANNON, AN INDIVIDUAL DOING BUSINESS AS CANNON
ELECTRIC DEVELOPMENT COMPANY, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This proceeding is before the Court on petition of the National Labor Relations Board for enforcement of its order issued against respondents on December 16, 1946 (71 N. L. R. B. 1059; R. 106-115), pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C. Sec. 151, *et seq.*), herein called the Act.¹ The jurisdiction of the Court is based upon Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C.

¹ Relevant portions of the Act and of other statutes referred to herein appear in the appendix, *infra*, pp. 56-58.

Supp., Sec. 141, *et seq.*),² the unfair labor practices having occurred at respondents' place of business in Los Angeles, California, within this judicial circuit.

STATEMENT OF THE CASE

The Board's order is based upon findings³ (R. 4-10, 18-94) that respondents dominated and interfered with the Contact Committee and the Cannon Employees Association and contributed support to these organizations in violation of Section 8 (2) of the Act; that respondents discriminatorily discharged 11 of their employees in violation of Section 8 (3) of the Act, thereby discouraging membership in the United Electrical, Radio and Machine Workers of America, CIO, and in the International Association of Machinists, Lodge 311, and encouraging membership in the Cannon Employees Association;⁴ that respondents interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1),⁵ and that

² The 1947 amendments to the National Labor Relations Act made no change in the provisions of the original Act which would affect the validity or enforceability of the Board's order in this case. See note 23, p. 51, *infra*.

³ The Board in its decision adopted the proposed findings of facts, conclusions of law and order which it had previously issued on July 1946 (R. 18-104), with certain additions and modifications expressly noted in the decision (R. 4-10).

⁴ These three organizations will be frequently referred to herein as the UE, IAM, and CEA, respectively.

⁵ The Board dismissed the complaint insofar as it alleged that respondents had discriminatorily discharged Gus Palm, Louis Tournie, and Louis LaGuerre Drouet (R. 16-17).

these unfair labor practices affected commerce within the meaning of Section 2 (6) and (7) of the Act. The Board ordered respondents to cease and desist from the unfair labor practices found, to cease giving effect to its contract with the Cannon Employees Association, to withdraw recognition from and completely disestablish the Cannon Employees Association, to reimburse all employees whose dues in the Cannon Employees Association respondent had checked off for the amounts thus deducted since February 15, 1945, and to refrain from recognizing the Contact Committee as the collective bargaining agency of their employees in the event that organization should return to active existence (R. 11-13). The Board's order further required the respondents to offer reinstatement with back pay to the 11 employees discriminated against and to post appropriate notices (R. 13-16).

A. The Board's findings as to the business of respondents

Respondent, Cannon Manufacturing Corporation, herein called the Corporation, is a California corporation having its principal office and place of business in the City of Los Angeles, California (R. 138-139). Respondent James H. Cannon, an individual, doing business under the trade name Cannon Electric Development Company, herein called the Company, who designs and engineers all products of the Corporation and sells its products, likewise has his principal office and place of business at the same address in the

City of Los Angeles, California (R. 138-139, 143-149).⁶

B. The Board's findings and conclusions as to respondents' unfair labor practices

1. Early labor relations history; accompanying interference, restraint, and coercion

Respondents early manifested hostility to the union organization of their employees. Although, in 1937, the Corporation, then known as the Cannon Electric Development Company,⁷ had entered into an agreement with the International Brotherhood of Electrical Workers, in spring of the following year when

⁶ The Corporation manufactures cable connections and electric specialties. During the calendar year ending December 31, 1944, the Corporation purchased materials valued in excess of \$3,000,000, of which approximately \$500,000 originated outside California. During the same period its entire manufactured products valued at approximately \$7,000,000, was sold to the Company. During 1944, the Company's sales of the Corporation's products exceeded \$7,000,000 in value. Approximately 15 percent of the sales were made directly to the United States Government and 70 percent thereof to aircraft companies having Government contracts, a substantial percentage being shipped to points outside California (R. 139-143). James H. Cannon, president of the Corporation and sole owner of the Company, takes an active part in the management of both enterprises. Upon the facts conceded by respondents (R. 139-151), it is clear that both respondents are subject to the Act.

⁷ In 1915, James H. Cannon founded the Cannon Electric Development Company (R. 143-145). Subsequently in 1920, the business was incorporated and continued to operate under the name of Cannon Electric Development Company until 1929 when the name was changed to Cannon Manufacturing Corporation (R. 144-145). At this time, James H. Cannon registered the Cannon Electric Development Company as the trade name of a sole proprietorship which, as indicated hereinabove, became the engineering and sales agency of the Corporation (R. 141, 144-146; *supra*, n. 6).

the International Association of Machinists sought to bargain on behalf of the employees,⁸ President James H. Cannon engaged in a correspondence with the IAM in which he clearly disclosed his antipathy to the organization of his employees by an "outside" labor union (R. 28; 155, 636-647).⁹

With respect to a tentative agreement which the IAM sent to him for consideration, President Cannon declared in the ensuing correspondence that he was unable to "see why a few disgruntled employees or the ambitions of an outside organization should be permitted to disrupt the Company and if it comes to a showdown we know we can replace every man in the place with men of equal ability and in many cases more or at least equal loyalty with the men now employed without any increase in wages" (R. 636-637).¹⁰ He stated that "in view of the attitude that is apparently manifest," the Corporation, if pressed too far, would "make it a policy to simply lay off men when work is caught

⁸ The organization of the International Brotherhood of Electrical Workers among the employees of the Corporation ceased to exist at some time shortly before the IAM sought to represent the employees for the purposes of collective bargaining (R. 56, 58-59).

⁹ Record references preceding the semicolon are to the Board's findings; those following are to the supporting evidence. Exhibits which have not been printed but have been filed with the clerk pursuant to stipulation (R. 132-133) are designated "Bd. Ex." or "Resp. Ex."

¹⁰ At this time, the Corporation had between 40 and 55 employees (R. 206, 645). Subsequently, the Corporation's force of employees greatly increased and at the time of the hearing, there were approximately 1300 employees on the Corporation's pay roll and 200 on that of the Company (R. 149-150).

up rather than try to promote new activities to keep them employed," as had been the Corporation's practice. President Cannon categorically stated that the Corporation was "not signing any agreement" and he concluded the letter with the statement that it was beyond his comprehension "why [the employees] * * * desire at this time to bring on tragedy, which any undue activity will result in, but inasmuch as what [the Corporation has] * * * done in the past year for their benefit does not seem to produce any lasting results there is no alternative except to bring it to a show-down at the present time and conclude the matter definitely and for all times" (R. 643).

In a subsequent letter he asserted that he was "endowed with sufficient 'intestinal fortitude' to tell any outside labor organization that tries to 'horn in' and disorganize the workers, to go to hell" but that he "would welcome the organization of employees into a group, represented by an accredited committee, authorized to meet with the management to discuss problems of mutual interest or grievances" (R. 646). Finally, he advised that the 34 union employees who were referred to in the letter of the IAM business agent might "draw their time, at any time they may see fit, and not wait 60 days for the ultimate decision" since there were "too many able mechanics who would be delighted to obtain employment with this organization to warrant wasting further time in discussing the formation of a clique

that could dominate the operation of this business over the will of the management" (R. 646).

At about the time of the foregoing correspondence, plant superintendent Roy Cromwell during working hours requested employee Alvin George to attend a meeting of the IAM that evening in order to "find out what was going on" and to "get in with the rest of the boys" (R. 205). George attended the meeting and on the following day Superintendent Cromwell questioned him as to the number of employees who had attended the meeting, the names of the leaders and principal speakers, and the nature of the business conducted at the meeting (R. 206-207).

Although thereafter in June 1938, the IAM obtained an agreement from respondents (Resp. Ex. 37, R. 156-157), the grievance committee called for by the agreement did not function either in 1939 or 1940, and insofar as the record shows, there was no IAM organizational activity among the respondents' employees after 1938 (R. 158-159).

**2. Respondents' domination and support of employee organizations;
accompanying interference, restraint, and coercion**

a. The Contact Committee

Following a vast increase in personnel in the early months of 1941, which coincided with the commencement of organizational activity by UE among the Corporation's employees, respondents about May 20, 1941, distributed among the employees a letter signed by President James H. Cannon advocating the establishment of the Contact Committee for the purpose of

tact Committee coincided with organizational activity on the part of UE, but a marked disparity is evident in respondent's treatment of the two rival labor organizations. On May 28, 1941, 8 days after his first letter advocating the formation of the Contact Committee to handle grievances, President Cannon refused a request of UE to discuss employee grievances, suggesting that employees with grievances proceed through the long-since inactive IAM (R. 566, 704-706). In a letter to the employees dated June 3, 1941, President Cannon declared that the employees "were given the opportunity to work out * * * (their) own destiny by intelligent selection of the Contact men" and he stressed that "no organization will dictate * * * (respondents') policies from the outside" and that the plant would "never be operated as a 'closed shop' by any organization as long as * * * (he owned) it" (R. 166, 658-660).¹²

On June 11, 1941, President Cannon assured the employees in a letter that respondents would meet with the Contact Committee, cooperate with it, and do "everything possible to make it a success" (R. 164, 665-667). He further declared that respondents would receive any "legal complaint" through the IAM, which, as previously indicated, was not then functioning as an organization of the Corporation's employees

¹² Testifying at the hearing concerning his prior contract with the IAM, President Cannon admitted that he "claimed" he "would never sign a closed shop contract where there was an outside affiliation" (R. 197). His opposition to closed shop contracts with the IAM and UE stands in marked contrast with his subsequent execution of a closed shop contract with the Company-assisted and dominated CEA (*infra*, pp. 20-21).

(R. 604, 656; supra, p. 7.) The letter, however, contained no reference to the UE, which was seeking to establish a grievance procedure with respondents. On June 18, 1941, two days after the UE had sent respondents a letter outlining a specific grievance procedure, President Cannon, again addressing the employees, asked them for an expression of their desires concerning the Contact Committee. In the letter he stated that the "enclosed" penny post cards were distributed to the employees for the purpose of giving them the opportunity "to inform me if you so desire, that you first want the opportunity to work out your own problems" through the Contact Committee and "that until this plan is found wanting in results you are not desirous of outside interference that could easily prove disastrous" (R. 166-167, 629, 661-663). On the penny post card addressed to President Cannon was printed the statement that the undersigned employee wanted to give the Contact Committee opportunity to function "with a view to increasing production to make possible increased wages" (R. 661).¹³

In subsequent correspondence with the UE which respondents distributed among the employees, President Cannon reiterated his refusal to meet with representatives of the UE asserting, *inter alia*, that a majority of the employees had selected the Contact Committee to take care of their interests (R. 173, 663-667). He further demanded that the UE "make

¹³ Also printed on the card was the statement that the undersigned understood that "this expression" would not interfere with his membership in any union and that he expected the Contact Committee to correct "reasonable grievances" (R. 661).

good" its charges that respondents had acted illegally under the Act or that it "quit harassing and trying to spread discontent among my employees" (R. 666-667). Concluding a letter dated July 3, 1941, President Cannon declared to the UE that "there is no need of paralleling the work of the present Contact Committee" (R. 667). Some few days thereafter on about July 8, 1941, in another letter distributed to the employees, he praised the Contact Committee and asked the employees to give it "a fair break" (R. 174-176, 667-670).

The Contact Committee remained in existence for about 3 months (R. 505). During the Committee's period of active existence, it met a number of times to consider employee grievances (R. 500-501). The meetings were held in the plant conference room on the swing shift and were attended by either President Cannon or his son, Vice President Robert Cannon (R. 501). The Committee had no constitution or bylaws and respondents' letter of May 20, 1941, advocating the establishment of the Committee which provided the sole basis for its organization, made no provision for dues, membership, or meetings of employees (R. 647-654). Employee participation other than by the Committeemen was limited to the election of the Committee members (*ibid.*).

The Contact Committee continued in active existence until sometime in September 1941 (R. 507-508). At that time pursuant to the suggestion of employee Ned Mandella who had already started the organization of the CEA, considered hereinafter (*infra*, pp. 13-32, the Committee met in the plant conference

room and voted to disband (R. 507-508). Although President Cannon, as he testified at the hearing, had then been informed that the Contact Committee was illegal under the Act (R. 603-604), the record contains no evidence that respondents took any steps to advise the employees of that fact or to disestablish the Committee (R. 603-605).

Upon the foregoing facts the Board concluded that the Contact Committee "was a creation of the respondents in its entirety," and that respondents by dominating, interfering with, and supporting the organization and administration of the Contact Committee violated Section 8 (2) of the Act (R. 5, 32).

b. *The Cannon Employees Association*

(1) Formation

The organizational activity which resulted in the formation of the CEA commenced some time in January 1941, immediately after the UE started its organizing campaign among respondents' employees (R. 208-210, 480-482, 542). On the day following the first appearance of the UE's sound truck in front of respondents' plant, Ned Mandella, a tool crib attendant, commenced soliciting employees to sign a petition which he had at the tool crib (R. 208-210). In its original form, the petition frankly stated that its purpose was "to keep out the CIO" and Mandella obtained the signatures of a number of employees to the petition as thus drafted (R. 210). Later, however, this heading was changed and the petition set forth as its purpose the formation of the Cannon Employees

Recreation Association, herein known as the CERA, to sponsor recreational activities among the employees (R. 210, 425-427, 480-481). Mandella vigorously solicited employees in the plant to sign the petition and a substantial portion of his organizational activity and solicitation occurred during working hours (R. 209-212, 216-217, 258-260, 425). He enlisted the assistance of other employees in forming his new organization and these likewise conducted their organizational activity in substantial measure during working hours (R. 264-267, 481-486).

Typical of the persistent character of the solicitation in which Mandella engaged were Mandella's repeated requests to employee Alvin George to sign the petition and join the CERA. On the first day of his activity, Mandella asked George at the tool crib during working hours to sign the petition "to keep out the CIO" which already contained a number of names (R. 210). George refused, expressing his belief that Mandella might "get himself into trouble" circularizing such a petition on company time and property (R. 210, 212). Mandella renewed his request later that same day and thereafter was "continually approaching" George (R. 216) to "sign up," even promising him "any office in the organization * * * outside of president" (R. 210-212, 215-216).

Respondents knew of Mandella's activities in this respect shortly after they began, and Cromwell, respondents' plant superintendent, approved and gave direct aid to Mandella's organizational efforts "to keep out the CIO." Thus, within a week or two after Mandella had commenced his solicitation, Cromwell

called George to his office and asked him why he had not joined the organization "they were forming" (R. 212-213). He assured George that Mandella's activity "was all right, the company knew about what he was doing" (R. 213). Cromwell explained to George that "it was to be a company union and that he would see that the right men got the right jobs in it, they would be given the proper training" (R. 214). Finally, Superintendent Cromwell made an outright request that George "join up" (R. 214).

Respondents gave other effective support to Mandella's organization during its early days. Within a few weeks after Mandella began his activities, a bulletin board was erected in the plant in front of Plant Superintendent Cromwell's office (R. 427). On it were posted notices and bulletins announcing the holding of an election for officers, the progress of the CERA, and listing the candidates competing in the forthcoming election (R. 261-262, 277-278, 427-428). Mandella had selected the candidates, and the list of names remained on the bulletin board for approximately one week (R. 261-262). Running against Mandella as a rival candidate for election as "head of the Association" was foreman Herb Elgin (R. 427). The election itself was held in the plant during working hours. Some ballots were distributed in the departments among the employees and others were put on a table placed between Superintendent Cromwell's office and the plating department in the plant (R. 262-263). Employees marked the mimeographed ballots and dropped them into the ballot box which stood on the table where the ballots were made available (R.

263). The election continued during an entire afternoon and the employees left their work to vote and place their marked ballots in the box (R. 263). Several employees counted the ballots in the plant (R. 263-264). Mandella and six other employees were elected as officers (R. 264). After the election, solicitation of employees to join CERA continued in the plant during working hours (R. 264-265).

The newly elected president and board of directors held three or four meetings between the time of their election and April 1941 (R. 274, 276), and four or five membership meetings were also held (R. 276). Despite its name, there is no evidence in the record that CERA in fact organized any recreational facilities for the employees or that questions relating to such matters were considered at these meetings. During February, however, the CERA officers aided by an attorney, one Lewis, had drafted and filed with the California State authorities Articles of Incorporation of the Cannon Employees Association, a nonprofit corporation, herein known as CEA (Resp. Ex., 38A, Bd. Ex. 35, R. 279-281). The Articles authorized the CEA to engage in welfare and recreational activities and "to act as a labor organization" (Resp. Ex. 38A).

The newly incorporated CEA was merely the continuation under a different name of the CERA which Mandella had first promoted in January 1941 "to keep out the CIO" (*supra*, p. 13). James H. Cannon himself testified that "CEA started to organize" as CERA (R. 603). As noted above, the CERA officers and directors, aided by the CERA attorney

Lewis, prepared and filed the Articles. All seven officers and directors of CERA, within a few weeks after the election and as of February 28, 1941, signed the Articles as incorporators and officers of CEA (Resp. Ex. 38A). The same seven subsequently prepared and voted for certain amendments to the Articles which they signed as of March 31, 1941 (Resp. Ex. 38B). Thereafter, in April 1941, the CERA officers and directors voted to change the name from CERA to CEA in order "to keep out the CIO" (R. 275, 279-280, 282-283), the precise purpose which had inspired Mandella's original effort to form CERA (*supra*, p. 13). No election, however, of officers for CEA was held and with the exception of two directors who resigned, "the Board of Directors of CERA continued to act as the governing body" of CEA (R. 35; 279-280). Mandella, who continued as president of CEA, appointed two employees to serve as directors in place of those who resigned (R. 280). CEA retained as its attorney Lewis, who had served CERA as its attorney, attended meetings of the CERA Board, and helped prepare the CEA Articles of Incorporation for the CERA officers (R. 274, 280, 282). Moreover, CEA used CERA membership cards to record the dues payments of CEA members as late as July 1941 (R. 490-491, Bd. Ex. 34, 42).

(2) Respondents' interference with, support to, and domination of CEA prior to the Board-conducted election of January 1943

Following the organizational steps described above, CEA and UE engaged in rival campaigns for the

allegiance of the employees which culminated on September 9, 1941, in a Board election to determine the bargaining representative (R. 37, 39-40; 595, 709-710).

During this period respondents continued to permit the organizational activity in which CEA officers and adherents engaged on company time and property. At the request of Mandella, employee Monjar actively solicited her coworkers to join CEA during a period of about two and a half months beginning at the end of May 1941 (R. 344-349). She turned in lists of new members and dues which she collected to employee Olsen, secretary of CEA, while the latter was at work and received from Olsen membership cards for distribution to the new members (R. 348-353). Although Olsen's foreman, Gervasi, on several occasions, observed this CEA organizational activity in his department, he took no steps to exclude Monjar, who worked elsewhere in the plant, from his department or to put a stop to the activity of Olsen and Monjar (R. 352-353). On about August 15, 1941, respondents issued a booklet for its employees entitled "Employee Information and Regulation," which provided, *inter alia*, that employees were not to solicit membership in any organization "during working hours or on company property" (Resp. Ex. 34). Both CEA and UE, however, continued organizational activity on company time and property.

But the promptness and severity with which respondents acted to stop UE organizational activity stands in marked contrast to the tolerance exhibited

to the far more extensive activity engaged in on behalf of CEA. On August 28, two employees asked employee Wiley, UE member and steward who had previously resigned from CERA, about joining the CEA. Although Wiley refused to discuss the matter during working hours, the two employees returned several times and finally Wiley gave them UE membership cards. Ten minutes later Superintendent Cromwell had Wiley called into his office and, without making any inquiry as to the circumstances, discharged Wiley forthwith for engaging in union solicitation on company time (R. 269-271). A few weeks later, however, in September, employee Bereznak during working hours actively solicited employees outside his own department to join CEA and was joined in this activity by the leadman of the department in which he was soliciting (R. 391-392). There is no evidence in the record, however, that respondents took any steps to stop this or other CEA activity occurring in the plant during working hours.

During the week preceding the September 1941 election, moreover, whenever at the change of shifts the UE sound truck appeared before the plant, loudspeakers on the roof of respondents' plant broadcast music with such volume as to prevent the employees from listening to the UE sound truck (R. 354-357). After the truck departed, however, the music died down (R. 355-356). In contrast, on the day before the election, CEA literature was permitted to remain on the time clock in the plant in the immediate vicinity of which a plant guard was stationed (R. 357-358). On

September 8, 1941, the day before the election, Foreman McClung of the finish castings department (R. 343) gave further evidence of respondents' partisanship in favor of CEA by wearing a CEA button at work (R. 357). Further exhibiting respondents' marked bias in favor of CEA, Foreman McClung, on the day after the election, which the CEA won,¹⁴ stated, "Well, we won the election" (R. 358-359).

Immediately following the election, Foreman McClung told employee Clarence Armant while he was at work in the plant not to wear his UE badge any longer and advised him that the election was over and that he had "better join the CEA" (R. 289-290). While he was speaking to Armant, the foreman knocked the UE badge which Armant was wearing to the floor with his pencil (R. 290). On another occasion immediately after the election results were announced on the loud speaker system in the plant, Foreman McClung similarly ordered employee Monjar to remove the CIO pin which she was wearing (R. 359).

On October 24, 1941, respondents and CEA entered into a collective bargaining agreement covering non-supervisory employees to remain in effect for one year and thereafter subject to termination on 30 days' notice (Bd. Ex. 28, p. 2). Despite President Cannon's earlier pronouncement to his employees, that the plant would "never be operated as a 'closed shop' by any organization as long as" he owned it (R. 660), the CEA agreement required respondents to employ "only

¹⁴ CEA defeated UE by a vote of 370 to 268 (R. 709-710).

members of the (CEA) in good standing”¹⁵ (Bd. Ex. 28, p. 3). As the Board noted (R. 42), there is no evidence in the record that “respondents opposed the inclusion of a union security clause in their contract with CEA.” The agreement provided a wage increase for the employees. It contained provisions relating to vacations, overtime, holidays, security, safety, and other conditions of employment. A grievance procedure was set forth in the agreement and CEA representatives were given the right to enter plant premises during working hours “for the investigation of working conditions and/or company-employee relations” (Bd. Ex. 28, pp. 5-6, 13). Finally, the agreement provided that respondents would deduct dues for CEA from employees who agreed to this check-off procedure (Bd. Ex. 28, p. 11).

Respondents’ intervention in support of CEA retained its positive character after the September 1941 election. Foreman Drouet served on the CEA’s Board of Directors (R. 304-305, 308). Respondents permitted CEA to use the plant premises to elect CEA officials in December 1941 and again in November 1942 (R. 290-296, 394-397, 509-510). On both occasions the balloting was conducted in the plant cafeteria located on respondents’ premises (R. 291-292). The 1941 election lasted from 12 noon until midnight (R. 294-295). Four CEA members, including Man-

¹⁵ CEA agreed to accept as members all persons employed by respondents at the date of execution of the agreement who made written application for membership. All new employees were required to file an application for membership “on completion of a ninety-day probationary period” (Bd. Ex. 28, p. 3).

della, served as ballot box watchers during the 12 hours that the polls were open and consequently were absent from their respective shifts during most of that period (R. 293-296). After the polls were closed at about midnight, the CEA watchers and a few other employees brought the ballots up to "Mr. Cannon's conference room" and counted them there (R. 293-294). Shortly thereafter, a run-off election was conducted in the plant cafeteria (R. 291, 293).¹⁶

Other evidence of respondents' support of CEA and opposition to UE is to be found in the treatment of employee Monjar who, prior to the Board election in September 1941, had changed her allegiance from CEA to UE. In November 1941, Frank Hobart, respondents' employee-relations director who also was editor-in-chief of the *Cannoneer*, published by the corporation for its employees (R. 372, 574-576), told Monjar, who was a steward and otherwise active in UE (R. 359, 371), that she would have to resign from the editorial staff of the *Cannoneer* if she continued writing for the "UE-News." (R. 375-377, 575-577). Accordingly, Monjar, who, insofar as the record shows, was the only employee writing simultaneously for both publications (R. 622-624), resigned from the staff of the *Cannoneer* (R. 377). Hobart's policy, however, not to have writers for the *Cannoneer* serve on the other publications in the plant at the same time (R. 575-

¹⁶ CEA elections were held in the respondents' plant cafeteria throughout the entire period of CEA's active existence (R. 452, 474, 558). CEA election of officers other than those described hereinabove were held in March 1943, May 1944, and July 1944 (R. 465, 474, 557-558).

577), was not similarly applied to CEA members. Although subsequently six employees who were members of the Cannoneer staff simultaneously contributed to the "CEA News" published by CEA, there is no evidence that in the case of these six specific instances Hobart enforced the policy against these employees requiring them to resign from the Cannoneer staff or to stop contributing to the "CEA News" (R. 620-621, 627).

Inasmuch as the names of these six employees were printed in the issues of the "CEA News," distributed among the employees, as members of the CEA editorial staff (R. 620-621), the Board found (R. 44) that Hobart, who was in charge of respondents' employee relations department, was "fully cognizant of the related activities of his staff" and that "his action with respect to Monjar was discriminatory." Moreover, when in April 1942, Monjar asked Foreman Gervasi for a 4 weeks' leave of absence to visit her mother, who was ill, he took the opportunity to criticize her affiliation and sympathy with the UE (R. 369-370). Although he finally granted the leave requested, Foreman Gervasi spoke to Monjar for about 1 hour telling her of the "error" of her ways "in relation to the Association (C. E. A.)" and that she should not have "come out for the C. I. O." as she had (R. 370). Gervasi declared to Monjar that it was "unfortunate" that she "had made the record at Cannon" which she had "in relation to union activities" and that because of her "attitude," it "was very hard for the company to grant * * * (her) any favors" (R. 370).

With the renewal of organizational activity by UE during 1942, President Cannon distributed among the employees several letters which attacked that organization and gave further support to CEA.¹⁷ Thus, in reply to a letter, dated April 24, 1942, from Harry Bridges, Regional Director for the CIO in California, expressing the desire to confer at sometime in the future with respondents, President Cannon, in a letter dated May 8, 1942, belligerently charged that CIO's "electrical division tried to take * * * (his) little company like Hitler took the low countries. First by Fifth Column methods of infiltration and then by force when * * * (the company's) defences were weakened by large additions of new help who did not know what it was all about" (R. 182, 671-673). President Cannon warned that "subversive moves to molest this plant will meet with an accounting to the collective front of the United States Army, Navy, Air and Signal Corps." He further declared that only the influx of new employees had enabled the CIO to gain "a foot hold at all" among respondents' employees, that respondents' plant would be "no 'push-over'," that "our little group now have in their hands means of expressing and representing themselves on a basis that is thoroughly democratic for those involved," and that he and Bridges had "nothing in common to discuss" (R. 672-673).

President Cannon's letter to his employees, dated May 29, 1942, which respondents distributed to the employees at the time, is characterized by the violence

¹⁷ These letters are set forth in the record at pages 671-689.

of respondents' attack upon the CIO Director, Bridges (R. 186, 674-675).

In contrast with his manifested hostility to the efforts of UE to organize respondents' employees, President Cannon in a subsequent letter to the employees clearly expressed his approval of CEA declaring that "the Association has not been given credit for the work it has done" and that "the boys in the Association have fought your battle loyally and sincerely" and urging that they "should be shown some evidence of appreciation by you for their efforts" (R. 196, 689-693).

On September 21, 1942, UE filed with the Board a petition for certification as bargaining representative of respondents' employees (R. 47; Bd. Ex. 68A), which culminated in a Board-conducted election held on January 25, 1943 (R. 47; Bd. Ex. 68K). Following the filing of this petition, respondents continued to distribute letters among the employees attacking the CIO. On November 3, 1942, respondents distributed for a second time among the employees President Cannon's letter of May 29, 1942, in which he had directed abusive language against Bridges and "eagle-beaked foreigners" in American labor (R. 186, 676-685).

A letter dated November 11, 1942, signed by President Cannon and distributed among respondents' employees to whom it was addressed, warned the employees not to be distracted from the war effort, for "when the soldier boys come home there will not be enough rat holes or raid shelters to conceal the racketeers, ex-convicts and foreigners who have been ex-

ploiting American labor, from the vengeful wrath of our fighters" (R. 186, 685-689). President Cannon declared that he, "personally," was "through with pussy-footing" and he spoke of the "deluge of obnoxious blackguarding bulletins, defamatory remarks over loud-speaking band wagons, treacherous propaganda from stooges employed within our own organization" to which he had in the past submitted (R. 688). In contrast, however, he promised in regard to the CEA that "we can accomplish even better results than those already obtained" inasmuch as the employees had "passed judgment on a new set of bylaws" that would enable them to govern their own affairs (R. 688).

(3) Respondents' interference with, support to, and domination of, CEA after the Board-conducted election of January 1943

As previously stated (*supra*, p. 25, on September 21, 1942, UE filed with the Board, pursuant to Section 9 of the Act, a petition for investigation and certification of representatives for respondents' employees. The election was held on January 25, 1943, and CEA again polled a majority (R. 47; Bd. Ex. 68K). Subsequently, the Board in a Supplemental Decision and Certification, issued on April 12, 1943, certified CEA as bargaining representative of respondents' employees and overruled objections filed by UE alleging that respondents had illegally assisted CEA prior to the election (R. 47-48; Bd. Ex. 68P).

On May 5, 1943, respondents and CEA executed a new agreement to be effective for 1 year or the dura-

tion of the war "whichever is longer," and subject thereafter to termination upon 30 days' notice (Bd. Ex. 29, p. 5). Respondents agreed that, when requested by CEA, it would discharge employees who had been expelled from CEA membership for failure to pay dues (Bd. Ex. 29, pp. 7-8).¹⁸ The contract also provided for the dismissal of employees expelled from CEA for reasons other than the nonpayment of dues, but in such cases an arbitration procedure was made available if respondents disputed the propriety of the reasons upon which CEA based the expulsion (Bd. Ex. 29, p. 8).¹⁹ The agreement contained provisions relating to wages, hours, and other working conditions and it also provided that CEA might use the cafeteria "for department and shift meetings" (Bd. Ex. 29, p. 20). Provision was made for respondents' deducting CEA dues from the wages of employees authorizing this check-off procedure (Bd. Ex. 29, p. 12).

Following the Board-conducted election held on January 29, 1943, respondents continued to intervene in the affairs of CEA. In the spring of 1943, Caf-farel, who was then president of CEA, was told by President Cannon that Cannon "didn't approve of Mr. Lewis being the Association attorney because * * * the employees were paying him out of their wages" (R. 539). At the next CEA board meeting,

¹⁸ Compare President Cannon's statement that the plant would "never be operated as a closed shop," *supra*, p. 10.

¹⁹ Pursuant to the closed shop provision of the contract respondents, upon request of CEA, discharged seven employees on June 12, 1943, and two more on July 29, 1944, following their expulsion from that organization (*infra*, pp. 34, 39).

Richard Franklin, business agent of the CEA, and John Gibson, a member of the board, proposed that Lewis be dismissed and a CEA board approved the motion (R. 539-540). In about May 1944, Robert Cannon, then vice president of the corporation (R. 599), similarly intruded in the affairs of CEA. At that time, employee Rachel McBurnie had been elected as a member of CEA's board of directors (R. 452). A few days before she was sworn in, John Gibson, then president of CEA, told McBurnie that Vice President Robert Cannon wanted to see her in his office (R. 452-453). Gibson then took her to see Vice President Cannon, who asked her "how * * * (she) happened to be elected on the Board of Directors" (R. 454). When McBurnie replied that "the girls wanted a woman on the board," Gibson asked whether McBurnie was "sure" she was not elected to the Board of Directors "to oust Richard Franklin" who was then CEA's business agent (R. 454). When McBurnie answered that she knew nothing about any such ouster, Vice President Cannon declared that CEA and respondents had always "got along very nice" and that "Mr. Franklin had made a good business agent" (R. 454).

Actually, opposition against the continuance of Franklin as business agent existed among several CEA officers and at a meeting of the Board of Directors held in the plant cafeteria on the day following Vice President Cannon's interview with McBurnie, a motion for Franklin's ouster was carried by a vote of four to three (R. 456-458). Gibson and other Board

members who supported Franklin called for a referendum by the CEA membership (R. 459-460). Shortly thereafter, an election was held in which the members of CEA were called upon to vote whether they wished to retain Franklin and Gibson or the CEA directors who had voted for the ouster of Franklin (R. 463-464). As in the case of all CEA elections (see n. 16, p. 22, *supra*), this election was held in the plant cafeteria (R. 465). The polls were open from 7 a. m. until 8:30 p. m. (R. 465). An employee who worked on a machine in one of the departments "sat there all day" guarding the ballot box in the plant cafeteria, and one of respondents' guards, dressed on this occasion in a business suit, also watched the box (R. 466). At the closing of the polls, a number of employees participated in the counting of the ballots, which took place in the plant cafeteria (R. 467-468). At least two of these employees were absent from the shift at which they would normally have been working at that time (R. 466-467). One of these, McBurnie, had received permission from her foreman to leave her work for the purpose of counting the ballots (R. 466). Although the counting lasted for about an hour and a half until shortly after 10 p. m. (R. 467), no deduction was made from McBurnie's pay for the time thus spent away from her work on CEA business (R. 469). When the ballots were counted, Cal Cannon, manager of respondents' cafeteria (R. 563), and the guard who had watched the ballot box during the day, placed the box and ballots in Cal Cannon's office in the cafeteria (R. 468).

From other evidence, as well as the several instances described above, the Board found (R. 51), that respondents at all times permitted employee representatives of CEA to attend to the affairs of that organization on company time, without loss of pay." Thus, in the fall of 1943, the CEA shop stewards on McBurnie's shift held a meeting in the plant cafeteria on company time at which they elected McBurnie as chief steward for that shift. Although McBurnie was absent from her work for a half hour to attend this CEA meeting, no deduction was made from her pay for the time thus spent away from her work on CEA business (R. 448-450). Other meetings of CEA officials were also held in the plant during working hours to discuss such things as grievances and to plan social events (R. 514, 517, 519).

Employee Caffarel, who served as CEA president from November 1942 until March 1943 (R. 510) and thereafter as treasurer until December 1943 (R. 514-515), absented himself frequently from his work throughout his incumbency to perform his duties as CEA official without any loss in pay (R. 513, 517, 519). Indeed, Caffarel's absences from the plant on CEA business were of sufficient frequency to necessitate respondents' issuance to him of a pass which entitled him to enter and leave the plant at any time without being questioned by the guards or others (R. 511-512). Respondents issued such a pass to at least one other member of the CEA board of directors, Bill Attaway (R. 511). Other CEA officials were permitted to devote Company time to CEA business, and also, as in

the case of Caffarel, to leave the plant in connection with such matters (R. 513, 559-561).

During John Gibson's incumbency as president of CEA the use of Company time by CEA officials in connection with the affairs of their organization became so frequent that respondent sought to curtail it somewhat. Thus, Plant Superintendent Hawkinson entered into an arrangement with Gibson whereby he was permitted to absent himself from work without loss of pay to conduct CEA business for not more than 2 hours each day (R. 558-559). In accordance with this arrangement, Gibson conducted CEA business on company time 4 or 5 days each week (R. 559).

In March 1945, CEA ceased to be active as a labor organization of respondents' employees. On March 16, 1945, and again on April 4, 1945, shortly before the hearing in this proceeding, CEA advised respondents by letter that its members had voted on March 13 to become members of Mechanics Educational Society of America, Local 75, and that henceforth the Society was the exclusive bargaining agent for respondents' employees (R. 614, 714-717). The letter also advised that the CEA board of directors had dissolved that organization, requested that the current dues check be made payable to the Society, and asked that respondents meet with officers of Local 75 of the Society in order to negotiate a new agreement (*ibid*). Accordingly, respondents executed an agreement with the Society on April 10, 1945 (R. 616). On April 23, 1945, however, the national secretary of the Society notified respondents by telegram that the contract was

cancelled (R. 608, 706-707). This telegram was read over the public address system in the plant and copies of it were posted on the bulletin boards in the plant (R. 618-619). No further developments involving the relationship between respondents and CEA or the Society occurred between the time of the Society's cancellation of the contract and the hearing before the Trial Examiner in this proceeding.

(4) The Board's conclusions with respect to the CEA

The Board, after reviewing the foregoing facts, concluded that respondents had dominated and interfered with the formation of CERA and CEA, interfered with the administration of CEA and contributed financial and other support thereto in violation of Section 8 (2) of the Act, and had thereby interfered with, restrained, and coerced its employees in violation of Section 8 (1) of the Act (R. 5, 66-67).

3. Respondents' discharges in violation of Section 8 (3) of the Act

a. *The discharges pursuant to respondents' contract with CEA*

(1) The discharges of June 12, 1943

As we have shown (*supra*, p. 21), on May 5, 1943, respondents entered into a collective bargaining contract requiring membership in CEA as a condition of employment and providing that respondents, at CEA's request, would dismiss employees expelled from CEA because of dues delinquency (Bd. Ex. 29, p. 8). The agreement further provided that in the case of em-

ployees expelled from CEA for reasons other than dues delinquency, respondents, when they did not agree with the reasons furnished by CEA, might take requests for discharge based upon such expulsions to arbitration (Bd. Ex. 29, pp. 7-8).

On May 26, 1943, the executive board of the UE local, composed of Erma A. Evenstad, Vivian Sullisan, Monna M. Nye, Joan Lawrence, and Clarence Youngberg, as well as three other employees not involved in this proceeding, distributed a letter among the employees asserting the intention of the signers not to join CEA (R. 407-409, 415-416, 418-419, 631, 694). A few days later, CEA served each of the signers with a complaint accusing them of violating the CEA by-laws in four particulars (Bd. Ex. 46; R. 409, 419). The complaint advised that, on June 8, 1943, a hearing would be held on the charges and that failure to pay back dues which they owed would lead to "action on that score" (Bd. Ex. 46). On June 8, 1943, the employees who had signed the original manifesto against CEA (with the exception of one of the persons not here involved) distributed a second letter, stating that they would not attend the CEA hearing (R. 410-411, 419-420, 436, 631, 695).

On the following day, CEA advised respondents by letter that the seven signers of the second letter had been expelled from CEA because of infractions of its bylaws and because of dues delinquency, and that three other employees, including Ada Lish and Elise Hunt, involved in this proceeding, were also expelled because of dues delinquency (R. 550, 707-708).

CEA requested that these employees be discharged by respondents within 7 days in accordance with its agreement dated May 5, 1943 (*ibid.*) Accordingly, on June 12, 1943, respondents pulled the time cards of the seven employees here in question and gave each of them a discharge slip advising them that they were dismissed "as per agreement" (R. 382-383, 401, 411-415, 417, 420-423, 430-438). Superintendent Hawkinson advised employee Sullivan, who had been absent on June 12, 1943, that she was discharged at CEA's request for signing the open letter of May 26, 1943, which the UE executive committee had distributed (R. 414, 417-418). Of the seven employees here involved, only three, Monna Nye (R. 381-400, 418-423), Vivian Mary Sullivan (R. 400-418), and Clarence William Youngberg (R. 424-437), testified. Counsel for respondents, however, stipulated that all seven of the employees discharged on June 12, 1943, were discharged under similar circumstances and for the same reasons (R. 424-425, 437-438).²⁰

(2) The discharge of Armant

As noted above (*supra*, p. 20) Armant had been an active UE member, and had declined to join the CEA (R. 287-288). After the election on September 9, 1941, however, which CEA won, Armant joined CEA and some months later he was an unsuccessful

²⁰ Although Louis Tournie was also included in this stipulation, the uncontradicted testimony shows that he voluntarily left the respondent's employ on June 18, 1943, and was not one of those discharged on June 12, 1943 (R. 418, 632-633).

candidate for the CEA board of directors (R. 290-296). Armant stopped his activity as UE shop steward after this election, but he continued occasionally to attend CIO meetings and never severed his connection with UE (R. 341-342).

In June 1942, Armant and another employee, Harmon Fellows, went to the office in the plant of Army Inspector Brown and gave him evidence indicating that some employees had been required to pay fees to private employment agencies in order to secure jobs with the company (R. 296-298). Ned Mandella, president of CEA, was implicated in this matter since applicants for jobs were cleared with him (R. 298-299, Bd. Ex. 36). Floyd Cate, a member of the CEA board of directors saw Armant and Fellows in the office of the Army inspector (R. 298, 300). Several days later Armant and Fellows received letters signed by Mandella notifying them that "due to unpleasant circumstances which have arisen" they were to be present at the CEA office on August 4, 1942 (R. 301-303, 693-694). Armant did not receive the letter until August 5, and pursuant to a telephone conversation with Mandella, he arranged to be present at the CEA office on August 7 (R. 303-304).

The CEA board of directors including Mandella were present at the CEA office on August 7 (R. 304). Mandella read the charges against Armant which included charges of union solicitation on company time in the rest room, giving the Army inspector information regarding employment in the plant, and making false statements against CEA (R. 305-306).

The CEA officers told Armant that he was guilty of the charges and would be discharged (R. 309, 336). Thereafter in a letter dated August 17, 1942, CEA asked the respondents to discharge Armant and Fellows as of August 19, 1942. On about that date, when Armant was entering the plant, his card was not in the rack (R. 309-310, 313). He telephoned Mandella at the CEA office who told him that he was discharged (R. 311). Armant then communicated with the CIO which called in the services of a Federal Conciliator (R. 310, 312). Thereafter on August 27, 1942, Armant broadcast over the radio under the sponsorship of UE an account of his discharge (Bd. Ex. 48, R. 335, 340-341). About 2 weeks after his discharge, Armant was reinstated and received back pay for the time lost (R. 313).

Armant returned to work on September 12, 1942 (R. 313). A half hour after Armant began work on that day, two CEA directors, Bereznak and Barnett, walked through the department talking to employees. Shortly thereafter a large group of employees followed these two men into the plant cafeteria (R. 314, 330). Hawkinson, then the plant superintendent, found Mandella addressing 100 to 150 employees in the cafeteria (R. 580-581, 585). Mandella told Hawkinson that Armant "was disqualified from working in there and he wanted him to be removed" (R. 585). Hawkinson told the employees to return to work but they refused (R. 586) and Mandella stated that the employees were "out on strike and would not go back to work as long as Mr. Armant was in the plant" (R.

597). Robert Cannon, respondents' vice president who had accompanied Superintendent Hawkinson to the cafeteria, then stated that respondents would send Armant out of the plant that evening and arbitrate the case (*ibid.*).

Armant again advised UE what had occurred (R. 317). About three days later, UE notified Armant that the Federal Conciliator advised that Armant should return to work (*ibid.*). When on September 15, 1942, Armant returned to the plant, he was told there would be an arbitration proceeding (R. 318-319). President James H. Cannon testified, however, that the proceeding which was held was not an arbitration proceeding, but that since Armant and Fellows had previously been discharged on CEA's word without investigation by respondents, the hearing on September 15, 1942, was held pursuant to the agreement with CEA to determine whether the CEA complaints against Armant and Fellows justified their discharge (R. 601-602). Subsequently, Armant was advised by the Federal Conciliator Livingston that he was discharged, and that he (Livingston) could do nothing about it (R. 323-324). This constituted the only notice of discharge which Armant received and respondents never advised him directly about this (R. 324). He has not worked for the company since that time (R. 325).

Thereafter Armant sued CEA and respondents because of his discharge (R. 325, Bd. Ex. 73, 74). The State Court found that CEA had expelled Armant from membership without following the procedure re-

quired by the CEA constitution and that he was still a member of CEA. The Court, however, also found that respondents had not conspired with CEA to expel Armant from membership in CEA and refused to enter a judgment against respondents (Bd. Ex. 73, 74). Respondents refused to rehire Armant when he applied for reinstatement on the strength of his judgment annulling the CEA expulsion proceedings (R. 325-329). In their brief before the Board (a true copy of which has been certified to this Court) respondents argued that they "were faced with the absolute necessity of discharging Mr. Armant upon his being rejected as a member of CEA or upon his dismissal from membership in CEA * * *."

(3) The discharges of Caffarel and Maynard

Herbert Caffarel began working for respondents in June 1940 (R. 477). For the 2 years preceding his discharge in 1944, he worked as a leadman in the punch press department (R. 525). In the early part of 1941, at Mandella's behest, Caffarel solicited employees to join CERA (R. 479-486). In May 1941, Caffarel became active in the Contact Committee, a labor organization sponsored by respondents to handle grievances (R. 494). He became chairman of that organization and retained that position until the dissolution of the Contact Committee some 3 or 4 months later (R. 494, 507). Caffarel then resumed his activities on behalf of CERA which had by this time assumed the name CEA (R. 509). In November 1942 he was elected to the CEA board of directors (R. 510). Thereafter the board elected Caffarel as president of

CEA (*ibid.*). In March 1943 Florence Maynard succeeded Caffarel as president of CEA and Caffarel was elected treasurer (R. 514-515), serving in that position until December 1943 (R. 515).

In December 1943, John Gibson became president of CEA, Maynard was elected a minor official and Caffarel was defeated (R. 521-522). At that time, CEA was employing Richard Franklin as its business agent (R. 547). Caffarel was opposed to the policies of Franklin and of Gibson (R. 522-523, 548). He had favored the continued employment of one Lewis as attorney for CEA which Franklin and Gibson had opposed (R. 538-540). These differences culminated in May 1944 when a number of CEA directors attempted to effect Franklin's discharge as CEA business agent (R. 457-458). On June 29, 1944, CEA notified Caffarel by letter that a hearing would be held on charges that Caffarel had "spread false rumors" (R. 523-525, 632, 701). Maynard received a similar letter (R. 527-528, 553). As a result of the hearing, the CEA board found Caffarel and Maynard guilty of the charges, but exonerated a third employee, Rachel McBurnie, who had also been charged with violating various CEA rules (R. 533-535). On July 24, 1944, CEA advised respondents that Caffarel and Maynard had been expelled from CEA and in effect requested their discharge (R. 604, 710). Respondents replied requesting information as to the specific charges against these two employees (R. 604, 711). CEA furnished this in a letter dated July 26, 1944 (R. 604, 711-714). On July 29, 1944, respondent's personnel director, Wilcox, gave both Caffarel and Maynard their

final checks (R. 537). Wilcox told Caffarel that respondents were required to comply with the terms of their collective agreement with CEA (*ibid*).²¹

- (4) The Board's conclusions with respect to the discharges requested by CEA.

The Board found that each of the ten employees discussed above (the seven discharged on June 12, 1943, and Armant, Maynard, and Caffarel) were discharged pursuant to the request of the CEA, in accordance with the contract between respondents and the CEA (R. 76, 79-80, 83). Having concluded that the CEA was dominated by respondents in violation of Section 8 (2) of the Act, the Board found that the discharges pursuant to the contract with the CEA were in violation of Section 8 (3) of the Act (*ibid*).

b. *The discharge of George for UE activity*

Alvin L. George was one of the older of respondents' employees, having started as a carpenter for respondents in March 1938 (R. 201). As noted above (*supra*, p. 14) in January 1941, employee Mandella, who then began organizing CERA, asked George to join that organization. Despite Mandella's repeated requests,

²¹ Prior to the hearing of Maynard's case on July 1, 1944, Maynard distributed a letter among the employees concerning her views of the controversy with CEA in which she stated, *inter alia*, that she had already tendered her resignation from the respondents (R. 551-554, 702-703). At the time of the hearing, Maynard was a WAC and did not testify (R. 627). In view of the testimony that Maynard's discharge was requested by CEA and that she received her availability slip and final check at the same time as Caffarel (R. 537), the Board found that Maynard was discharged and, despite her own statement, did not resign (R. 83).

George refused to do so (R. 209-216). Within a week or two after Mandella had commenced his solicitation, Plant Superintendent Cromwell called George to his office and asked him why he had not joined the organization "they were forming" (R. 213-214). Plant Superintendent Cromwell explained to George that Mandella's activity "was all right, the company knew about what he was doing" (R. 213) and made an outright request that George "join up" (R. 214). George, however, refused to join CEA. In April 1941, George joined UE and began wearing his union button in the plant (R. 220). A few days thereafter, Superintendent Cromwell asked him about his UE affiliation and when George admitted his membership in that organization, Superintendent Cromwell "got very mad" and walked away (R. 221).

On August 26, 1941, George together with employee Ivan Jensen, spoke over a local radio station in Los Angeles under the sponsorship of UE (R. 221-223), Bd. Ex. 30). George's radio speech was a union pep talk to persuade the employees to join UE. George attacked working conditions at the plant and asserted that Superintendent Cromwell was antiunion and that he promoted his "pets" among the employees (Bd. Ex. 30). A few days after this speech, Cromwell discharged George and Jensen for making the broadcast (R. 223-224). Because of George's discharge and the dismissal of four other active UE members, a strike occurred which lasted for a few hours on September 1, 1941 (R. 227-228). A strike settlement agreement, however, providing for the reinstatement of the discharged members of UE subject to arbitration, put an

end to the strike (Bd. Ex. 32). George and Jensen, who had also been discharged, returned to work and approximately one week later an arbitration hearing was held (R. 229). The arbitrators ordered George and Jensen reinstated and placed upon probation for 45 days (R. 233, 255-256). When, on the day of the award, George told Superintendent Cromwell the terms of the award, Cromwell replied that he would "get" George before the 45 days were up (R. 233-234).

Shortly after the execution of the agreement of October 14, 1941, requiring membership in the CEA as a condition of employment, George joined CEA (R. 240). George continued his CIO membership after his reinstatement, the signing of the union shop contract between CEA and respondents on October 24, 1941, and his subsequent joining of CEA in compliance with that contract (R. 241). In January 1942, Superintendent Cromwell questioned George in the plant cafeteria concerning his opinion of Harry Bridges and another CIO leader. When George expressed a favorable opinion about these men, Cromwell became angry and told George "we would all get our heads cut off some day" (R. 242-243).

In February 1942, employee Gibson, then chairman of the CEA grievance committee, told George that CEA officers were planning to effect the discharge of employee Monjar who after her earlier activity on behalf of CEA had left that organization and become an active member of UE (R. 243-244). George told Monjar what Gibson had reported to him (R. 244-245, 359-361). Within a short time thereafter (R. 361), two employees, Pete Vitale, CEA director and Mon-

jar's leadman, and Andy Bereznak, CEA director, called Monjar from her work and brought her to Superintendent Cromwell's office where they accused Monjar in Cromwell's presence of spreading false rumors (R. 361-363). Cromwell asked Monjar if the charge was true, and Monjar stated what George had reported to her (R. 363). George was then called into the office, and he demanded a hearing (R. 245-247, 363-364). Both respondents' rules and the CEA by-laws prohibited the "spreading of false rumors" (Resp. Ex. 34, p. 13; Bd. Ex. 39, p. 16).

Present at the hearing held in the plant conference room on the following day were Superintendent Cromwell, the CEA board of directors, George, Monjar, and Lewis, the CEA attorney (R. 248, 364-365). Monjar was asked to repeat what George had told her (R. 366). Lewis accused George of having violated the CEA bylaws (R. 248-249). George was then asked who had told him that the CEA officers were planning to effect Monjar's discharge (R. 249). George repeated the conversation which he had had with Gibson and submitted a notarized statement which he had prepared the previous night (*ibid.*). Gibson denied the conversation and Cromwell then told George to return to his work (R. 250). About a week later, Cromwell called George into his office, gave him his check, and told George that he was being discharged for spreading false rumors (R. 250-251). As George was picking up his tools to leave the plant, his foreman, Hintemeyer, told him that he had nothing to do with the discharge and that George was a good worker (R. 252).

Upon the foregoing facts, the Board concluded that although George was ostensibly discharged for violating the company's "false rumor" rule, the rule "was discriminatorily applied to terminate the employment of a UE adherent, on a pretext supplied by CEA, and in conformity with the obvious desires of that organization" (R. 71).

QUESTION PRESENTED

Whether there is substantial evidence to support the Board's finding that respondents violated Sections 8 (1), (2), and (3) of the Act by dominating and supporting employee organizations (the Contact Committee, CERA, and CEA), by discriminating against adherents of affiliated unions, and by discharging employees for union activities or at the behest of a union established and maintained by unfair labor practices.

ARGUMENT

I

Substantial evidence supports the Board's finding that respondents violated Sections 8 (1) and (2) of the Act by dominating and interfering with employee organizations

A. Respondents' domination and support of the Contact Committee

The Board's finding that respondents had unlawfully supported, dominated and interfered with the formation and administration of the Contact Committee is supported by undisputed evidence. As we have shown (*supra*, pp. 7-12) respondents initiated the Committee, prescribed its structure, held elections and meetings of the Committee in the plant conference room during

working hours and promised the employees that if desirable, it would furnish paid clerical help and pay Committee members if their duties became burdensome. President Cannon, the active head of the Corporation, or his son, Vice President of the Corporation, attended the meetings of the Committee. In the open letters to the employees and in his correspondence with the UE, President Cannon gave further support to the Contact Committee by making manifest to the employees the marked disparity in attitude and treatment accorded to the rival labor organizations (*supra*, pp. 7-12). Since, as we have seen (*supra*, p. 12), there was no provision for meetings of the general body of employees, respondents' employees had no opportunity as a group to express their approval or disapproval of the Committee or to exercise any control over the Committeemen. That the Contact Committee was not the outgrowth of a spontaneous desire of respondents' employees, but from its very inception existed in violation of Section 8 (2) and (1) of the Act, requires no further argument. *N. L. R. B. v. Southern Bell Telephone & Telegraph Co.*, 319 U. S. 50, 55, 58; *N. L. R. B. v. Security Warehouse & Coal Storage Co.*, 136 F. 2d 829, 831-832 (C. A. 9); *N. L. R. B. v. Thompson Products*, 141 F. 2d 794, 796-797, 799 (C. A. 9); *N. L. R. B. v. Northwestern Mutual Fire Ass'n.*, 142 F. 2d 866, 868 (C. A. 9), certiorari denied 323 U. S. 726; *N. L. R. B. v. Wm. Tehel Bottling Co.*, 129 F. 2d 250, 252-253 (C. A. 8).

B. Domination, interference, and support of CEA

As previously noted (*supra*, p. 32), the Board concluded upon the entire record that respondents had,

“since on or about January 1, 1941, dominated and interfered with the formation of CERA and the Cannon Employees Association, interfered with the administration of the Cannon Employees Association and contributed financial and other support thereto” in violation of Section 8 (2) of the Act, and had “interfered with, restrained and coerced their employees in the exercise of the rights guaranteed them in Section 7 of the Act” (R. 66-67). These findings are amply supported by the evidence summarized above (*supra*, pp. 13-32).

At the very outset of Mandella's efforts to organize CERA “to keep out the CIO,” he received the active support of Plant Superintendent Cromwell who advised employee Alvin George that the organization would be a “company union,” assured him that respondents knew what Mandella was doing, and urged him to join (*supra*, p. 15). Respondents permitted the CERA, moreover, to hold its first and only election on company property and although the voting was conducted on company time, employees thus absent from their work suffered no loss in pay (*supra*, pp. 15-16). Further, CERA was allowed to publicize its activities and news of the impending election by postings on the bulletin board located near Superintendent Cromwell's office. Although CERA's founders professed that they were organizing a recreation group, the record contains no indication that it ever functioned as a recreational club and in view of Mandella's original solicitation avowedly “to keep out the CIO,” Superintendent Cromwell's above-mentioned conversation with George, and the other support respondents gave

CERA, it is clear, as the Board found (R. 61), that CERA was "organized with the knowledge and consent of management as the forerunner of a labor organization designed 'to keep out the CIO.' "

CEA, moreover, was the direct successor and in fact a continuation of CERA. The CERA officers incorporated CEA within a few weeks after their election as the governing body of CERA. Shortly thereafter, in April 1941, these same officers voted to change the name of CERA to CEA. With the exception of two employees who resigned from the group of officers, the CEA officers, including Mandella, continued as officers of CEA. The general membership of CERA did not participate either in the change or in any election of new officers. Until July 1941, CEA continued to use the CERA membership cards. President Cannon's testimony that "CEA started to organize" as CERA (R. 603), confirms the Board's conclusion that CEA was the successor of CERA (R. 62).

During 1941 and 1943 when CEA and UE were competing to organize respondents' employees, respondents affirmatively assisted CEA through the sharply contrasting treatment accorded to these two labor organizations. Respondents' rule forbidding solicitation for any organization on company time and premises²² was discriminatorily applied in that in practice it was directed solely against UE activity. Although CEA adherents engaged in organizational activity on

²² Because of the breadth of the prohibition the rule of itself, quite apart from its discriminatory application, constituted an illegal interference with the organizational rights of the employees. *Republic Aviation Corp. v. N. L. R. B.*, 324 U. S. 793.

behalf of CEA both before and after the promulgation of this rule, and although it is clear from Monjar's and Olsen's CEA activity in Foreman Gervasi's presence on several occasions and from Superintendent Cromwell's earlier awareness of CEA purposes and activity that respondents were aware of such CEA solicitation, the record contains no instance of action taken against any CEA adherent for violation of the rule. On the other hand, the far less flagrant violation of Wiley, a UE steward, was punished by prompt discharge.

In the week or two preceding the September 1941 election, blasts of music from loudspeakers on the roof of the plant prevented the effective use of UE's sound truck during the change of shifts. In striking contrast to the opposition thus shown to UE is respondents' action immediately prior to the election in permitting CEA literature to remain on the time clock in the plant. Further demonstrating the contrasting treatment accorded the proponents of the competing unions is respondents' action in requiring Monjar to choose between writing for UE and continuing as an editor of respondents' house organ, while subsequently respondents in six instances permitted employees writing for the CEA News to continue as members of the Cannoneer staff.

Other evidence of respondents' contrasting treatment of UE is to be found in Foreman McClung's conduct in ordering two employees to take off their CIO buttons on the day following the September election, in Foreman Gervasi's prolonged conversation with Monjar, then active in UE, concerning her

attitude toward the CIO, in Gervasi's frank statement that respondents' treatment of her depended upon her attitude toward union activity, in Superintendent Cromwell's displays of anger to George on two occasions because of his membership in and sympathy for UE, and, ultimately, in respondents' discharge of George because of his UE activity.

Finally, it should be noted that although President Cannon unequivocally declared in his June 3, 1941, letter to the employees that "the plant will never be operated as a 'closed shop' by any organization" (R. 660), in October 1941 respondents and the CEA entered into a contract which made membership in that organization a condition of employment. Respondents have made no effort to explain their change of position as to a closed shop on any basis other than the nature of the organizations involved.

Respondents' conduct summarized above, replete with instances of contrasting treatment of competing unions and assistance to CEA, clearly evidences a violation of Section 8 (2) and (1) of the Act. *N. L. R. B. v. Southern Bell Telephone Co.*, 319 U. S. 50, 58; *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 589; *N. L. R. B. v. Bradford Dyeing Assn.*, 310 U. S. 318, 333-337; *N. L. R. B. v. Idaho Refining Co.*, 143 F. 2d 246, 248 (C. A. 9); *N. L. R. B. v. Thompson Products*, 141 F. 2d 794, 796-797 (C. A. 9); *N. L. R. B. v. J. G. Boswell Co.*, 136 F. 2d 585, 593 (C. A. 9); *N. L. R. B. v. Germain Seed & Plant Co.*, 134 F. 2d 94, 97-99 (C. A. 9); *N. L. R. B. v. Northwestern Mutual Fire Assn.*, 142 F. 2d 866, 868 (C. A. 9), certiorari denied 323 U. S. 726.

Respondents' support of CEA continued unabated following the election on January 25, 1943. As before, respondents permitted CEA to hold elections of its officers on company property and furnished bulletin boards in the plant for the use of CEA. The contract of May 5, 1943, specifically obligated respondents to furnish six bulletin boards in the plant for CEA and provided that respondents would permit the use of the cafeteria for CEA "departments and shift meetings" (Bd. Ex. 29). The CEA board of directors and shop stewards also used the cafeteria during working hours to conduct CEA business. On two occasions, described above (*supra*, pp. 28-29), the Cannons intervened to influence the action of the CEA board of directors on matters related to the internal affairs of that organization, thereby exercising domination over it. In addition, respondents during one period had a representative of management, Foreman Drouet, actually sitting on the Board of Directors of CEA (*supra* p. 21). Respondents, moreover, permitted CEA adherents to conduct CEA business both on and off company property during working hours without loss of pay, and institutionalized this practice by the issuance to CEA officers of passes permitting free egress from and ingress to the plant. This conduct like respondents' earlier support constituted interference and support of the CEA in violation of Section 8 (1) and (2) of the Act. See particularly the *Southern Bell*, *Idaho Refining*, *Thompson Products*, and *German Seed* cases, *supra*.

Thus the record, considered as a whole, furnishes ample support for the Board's finding that respond-

ents dominated and supported the CEA in violation of Sections 8 (1) and (2) of the Act.²³

Respondents contended before the Board that the Board's action in certifying the CEA following the election of January 25, 1943, precluded it from examining respondents' conduct prior to the 1943 certification in the instant proceeding. A similar contention was squarely rejected by the Supreme Court in *Wallace Corp. v. N. L. R. B.*, 323 U. S. 248, 253-255, where the Court expressly held that the Board "was justified in considering evidence as to (the employer's) conduct, both before and after the settlement and certification" (323 U. S. at 255). See also *N. L. R. B. v. Gilfillan Bros.*, 148 F. 2d 990, 991, where this Court, relying on the *Wallace* case, stated that "The dominating acts before the certification, followed by such domination thereafter, may be considered by (the Board)."

Equally without merit was respondents' contention to the Board that the failure of the regional director to issue a complaint based upon the post-election

²³ Since the conduct described above fully supports the finding of domination and support, there is no occasion to consider whether certain statements of President Cannon and other supervisory officials, upon which the Board also relied, fall within the category of "views, argument, or opinion" so as not to be evidence of an unfair labor practice under Section 8 (c) of the Act as amended if they contained no threat of reprisal or force or promise of benefit. Assuming, *arguendo*, that Section 8 (c) would legalize statements such as these, the validity of the Board's findings is unimpaired since they are amply supported by the conduct described above. See *N. L. R. B. v. Sandy Hill Iron & Brass Works*, 165 F. 2d 660, 662 (C. A. 2). The Board's decision in the instant case was rendered before the Act was amended, and at that time its reliance upon respondents' statements was unquestionably appropriate.

charges of the UE prevented the Board from subsequently considering evidence as to respondents' illegal conduct prior to the date of the UE charges. As the Board stated (R. 56-57), "Nonaction by the Regional Director provides no indication of a ruling upon the merits." See *N. L. R. B. v. Baltimore Transit Co.*, 140 F. 2d 51, 54-55 (C. A. 4), certiorari denied 321 U. S. 795; *N. L. R. B. v. Phillips Gas & Oil Co.*, 141 F. 2d 304, 305-306 (C. A. 3). In any event the Board's findings that respondents illegally dominated and supported the CEA are fully supported by the evidence relating to respondents' conduct subsequent to the 1943 certification and UE charge, as well as by the evidence relating to prior conduct.

II

Substantial evidence supports the Board's finding that respondents discharged 11 employees in violation of Section 8 (1) and (3) of the Act

A. Discharges made pursuant to the union shop contract with the CEA violate Section 8 (1) and (3)

The Board found that respondents discharged ten employees²⁴ at the request of the CEA, pursuant to the contract with CEA which required membership in that organization as a condition of continued employment by respondents. The evidence is undisputed that each of these employees was discharged following a request of the CEA. Since, as we have seen (Point I, *supra*)

²⁴ The seven dischargees of June 12, 1943 (Joan Lawrence, Erma Evenstad, Vivian Sullivan, Monna Nye, Ada Lish, Eloise Hunt, and Clarence Youngberg) and Clarence Armant, Florence Maynard, and Herbert Caffarel.

the CEA was company dominated and supported in violation of Section 8 (2) of the Act, it follows that the discharges made pursuant to the union shop agreement with the CEA were in violation of Sections 8 (1) and 8 (3). *N. L. R. B. v. Electric Vacuum Cleaner Co.*, 315 U. S. 685, 694; *The Wallace Corp. v. N. L. R. B.*, 323 U. S. 248, 251; *N. L. R. B. v. Cowell Portland Cement Co.*, 148 F. 2d 237, 243 (C. A. 9), certiorari denied 326 U. S. 735.²⁵

B. George was discharged for union activity in violation of Section 8 (1) and 8 (3)

George was one of the old employees in point of service, having worked for respondents since 1938, and apparently no fault had been found with his work. However, he had been notably reluctant to join the CEA and had long been one of the most outspoken of the UE adherents among respondents' employees. On several occasions, George's pro-UE attitude had incurred the anger of Plant Superintendent Cromwell,

²⁵ Respondents argued before the Board that although Maynard was discharged after a request of the CEA, the record shows that she had previously resigned. Although Maynard had issued a statement that she had previously "tendered her resignation" (R. 702), there is no other evidence that she did, in fact, resign or that any tendered resignation had been accepted. The CEA requested the discharge of Maynard and Caffarel in a letter (R. 710) over 3 weeks after the "resignation" to which Maynard referred, and the company thereafter requested particulars which the CEA subsequently furnished (R. 711-714). Maynard and Caffarel were then given their final pay at the same time. Under the circumstances "there is evidence from which an inference can be drawn in support of the finding" (*N. L. R. B. v. Idaho Refining Co.*, 143 F. 2d 246, 247 (C. A. 9)) that Maynard did not effectively resign but was instead discharged pursuant to the request of the CEA.

who threatened to “get” George (*supra*, pp. 41-42). The immediate cause of George’s discharge was his alleged violation of the rule against spreading false reports, a rule contained in the CEA bylaws and in the regulations of the Corporation. The CEA complained of George’s violation of its bylaws; and, following a “hearing” before Cromwell, George was discharged by Cromwell, ostensibly for violation of the Corporation’s rule. Acting upon the pretext thus supplied by the company-dominated union, George’s old enemy was thus enabled to carry out his threat and to rid the plant of one of the strongest UE supporters. In the light of this record, the Board clearly had “reasonable ground to infer” that George’s UE activities were the actual cause of his discharge. *N. L. R. B. v. Polson Logging Co.*, 136 F. 2d 314, 315 (C. A. 9); see also *N. L. R. B. v. Harris-Woodson Co.*, 162 F. 2d 97, 101 (C. A. 4).

CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence on the record considered as a whole, that its order is valid and proper,²⁶ and that a decree should issue enforcing the order in full as prayed in the Board's petition.

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MAY 1949.

²⁶ Respondents filed only a general exception to the Board's order (R. 105), and its validity is therefore not in issue. *N. L. R. B. v. Cheney California Lumber Co.*, 327 U. S. 385, 388-389; *Marshall Field & Co. v. N. L. R. B.*, 318 U. S. 253, 255.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are as follows:

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to Section 6 (a) an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, Secs. 701-712), as amended from time to time, or in any code or agreement approved

or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

The relevant provisions of the National Labor Relations Act, as amended by Section 101 of the Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*) are as follows:

* * * * *

UNFAIR LABOR PRACTICES

SEC. 8 (c). The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

PREVENTION OF UNFAIR LABOR PRACTICES

* * * * *

SEC. 10 (e). The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings,

including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

No. 12142

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

CANNON MANUFACTURING CORPORATION and JAMES H.
CANNON, an individual, doing business as CANNON
ELECTRIC DEVELOPMENT COMPANY,

Respondents.

BRIEF OF RESPONDENTS.

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AUG 1 1949

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vs.

CANNON MANUFACTURING CORPORATION and JAMES H.
CANNON, an individual, doing business as CANNON
ELECTRIC DEVELOPMENT COMPANY,

Respondents.

BRIEF OF RESPONDENTS.

This matter is now before this Honorable Court on the petition of the NATIONAL LABOR RELATIONS BOARD filed herein December 31, 1948, to enforce its order issued on December 16, 1946.

Jurisdiction.

As stated in petitioner's brief (p. 1) this court has jurisdiction pursuant to Sections 10(c) and (e) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C. Sec. 151, *et seq.*), hereinafter called the Act.

Statement of the Case.

The statement of the case as set out in pages 2 through the first two lines of page 3 of petitioner's brief is satisfactory to the respondents. The matter set out in that brief under "B. The Board's findings and conclusions as to respondents' unfair labor practices" (Pet. Br. pp. 4-44) and the conclusions set out therein are not conceded by the respondents.

The hearing before the Trial Examiner closed June 7, 1945; the Board's Order is dated December 16, 1946; the petition herein was filed December 31, 1948.

It is interesting to note, therefore, that the order which by this petition it is sought to enforce was made one year, six months and nine days after the close of the hearing before the Trial Examiner; the petition was filed in this court two years and fifteen days after the date of the order which it is now sought to enforce; and that it was three years, six months and 24 days between the close of the hearing before the Trial Examiner and the date of the filing of the Petition in this court.

To the end that this court may have before it the background of operations of the respondents, we call attention to the following facts:

The business began in 1915 under the name of Cannon Electric Development Company. In 1920 it was incorporated under that same name [R. 143-4]* and continued

*Explanatory Note: Herein the Printed Record is designated "R."; exhibits which have not been printed but have been filed with the clerk pursuant to stipulation [R. 132-133] are designated "Bd. Ex" or "Resp. Ex."; Petitioner's Brief as "Pet. Br."; Cannon Employees Association as "CEA"; Cannon Employees Recreation Association as "CERA"; United Electric, Radio and Machine Workers of America CIO as "UE"; International Association of Machinists Lodge 311 as "IAM".

to so operate until the name of the corporation was changed to Cannon Manufacturing Corporation. This was in 1939. About April, 1939, James H. Cannon qualified to do business in Los Angeles County under the fictitious firm name of Cannon Electric Development Company and he has continued to so operate up to the present time [R. 144-5]. The purpose in operating the two businesses was because Mr. Cannon "had in mind letting the employees participate in the operations" and as he said, "I took the designing and creative work and the engineering and the sales contact and advertising from the actual manufacturing which we could pin down to a real basis of fact, and that is where I had in mind letting the employees in on the manufacturing, which wouldn't have any ambiguous costs and then they could participate accordingly, but before I could carry out my plans the war hit us" [R. 146-7]. All of the sales of the company's products were made by Cannon Electric Development Company and it later sold all of the products of the Cannon Manufacturing Corporation [R. 149].

The business had a 4,000% increase in employees in four years and Mr. Cannon was, as he said, not able to handle any labor relations because with such an increase of employees there was no opportunity "to do much contacting anywhere except to hold the organization together and keep out of the hands of the investment bankers and the sharks" [R. 151].

The Board's Order.

The Board's order is based upon findings—

(1) That respondent dominated and interfered with the Contact Committee and the CEA and contributed support to these organizations in violation of Section 8(2) of the Act [R. 94-95].

(2) That respondents discriminatorily discharged eleven of their employees in violation of Section 8(3) of the Act, thereby discouraging members in the UE and encouraging membership in the CEA [R. 95].

(3) That respondents interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(1) [R. 95].

(4) And that these acts (called "unfair labor practices") affected commerce within the meaning of Section 2(6) and (7) of the Act [R. 95].

It is urged by the petitioner (Pet. Br. 3) that the Board ordered the respondents to cease and desist from the said unfair labor practices found, and—

(T) To cease giving effect to its contract with the CEA,

(U) To withdraw recognition from,

(V) And completely disestablish the CEA,

(W) To reimburse all employees whose dues in the CEA respondent had checked off for the amounts thus deducted since February 15, 1945, and

(X) To refrain from recognizing the Contact Committee as the collective bargaining agency of their employees in the event that organization should return to active existence [R. 11-13].

The Board's order further required the respondents to
(Y) Offer reinstatement with back pay to the 11
employees discriminated against and to post appropriate
notices [R. 13-16].

Errors Relied Upon by Respondent.

I. The points sought to be made by petitioner's brief:

"B. The Board's findings and conclusions as to
respondents' unfair labor practices.

"1. Early labor relations history; accompanying
interference, restraint, and coercion" (Pet. Br. 4).

are not sound.

II. The Board's findings and conclusions as to respondents' unfair labor practices.

"2. Respondents' domination and support of employee organizations; accompanying interference, restraint, and coercion" (Pet. Br. 7).

as urged by petitioner should not be upheld.

III. The Conclusions discussed by petitioner under:

"3. Respondents' discharges in violation of Section 8(3) of the Act." (Pet. Br. 32.)

are unsound.

IV. The Board conducted elections—each won by CEA—and which resulted in certifying CEA as bargaining representative and in the making of the contract between respondents and CEA should preclude the enforcement of the Board's order.

V. The enforcement order sought here should not be made because of delay in bringing these proceedings.

ARGUMENT.

It is reasonable to expect that petitioner has set out in its brief the strongest possible case against the respondents. Unusual as it is, we earnestly believe that petitioner's brief itself offers the best possible argument for denying the petition herein. For that reason we have in large measure followed petitioner's brief in the discussions hereafter.

I.

The Points Sought to Be Made by Petitioner's Brief:

“B. The Board's Findings and Conclusions as to Respondents' Unfair Labor Practices.

1. Early Labor Relations History; Accompanying Interference, Restraint, and Coercion.”
(Pet. Br. 4) Are Not Sound.

Many of the statements made under this heading of the petitioner's brief, in our opinion, refute the charges which as a whole are leveled against the respondents. It is conceded (Pet. Br. 4) that as early as 1937 the corporation voluntarily entered into an agreement with the IAM. This was apparently done without coercion or “pressure” of anyone as against the corporation.

Petitioner complains that [R. 4] “in the spring of the following year” when IAM sought to bargain on behalf of the employees, Mr. Cannon disclosed “his antipathy to the organization of his employees by an ‘outside labor union.’” We earnestly believe that careful perusal of that correspondence [R. 636-647] and of the tentative

agreement will demonstrate complete good faith of Mr. Cannon and of his companies in actually seeking "to promote new activities to keep them (his employees) employed" (as had been the corporation's practice) rather than to simply lay off more people when the work became slack [R. 638].

Surely it is going a long way to urge that an employer was coercive of his employees and improperly interfered or restrained the activities of those employees when as early as 1937 and up to and beyond April 27, 1948 [R. 636] he made the voluntary agreement with the IAM and was seeking methods and means by which he could keep his employees profitably employed.

It must be borne in mind that in submitting the so-called "tentative agreement" the IAM injected themselves into this employer-employee relationship and proposed an agreement which, for the reasons pointed out by Mr. Cannon was not at all fair, without any evidence from the IAM that it had authority to act as a bargaining agent for the whole or any appreciable number of the employees of Mr. Cannon.

If, as pointed out "the organization of the International Brotherhood of Electrical Workers among the employees of the Corporation ceased to exist at some time shortly before the IAM sought to represent the employees for the purpose of collective bargaining" (Pet. Br. 5), certainly such fact cannot be charged as an offense against the respondents; it must have been the voluntary act of the union itself.

It seems a far cry from the present claim of the Board that the respondents had been guilty of some reprehensible conduct when to support that contention the petitioner [Pet. Br. 6; R. 646] points out that Mr. Cannon declared that he "would welcome the organization of employees into a group, represented by an accredited committee authorized to meet with the management to discuss problems of mutual interest or grievances" [R. 645].

There is a further incongruity between the petitioner's broad stand that these respondents have been guilty of unfair labor practices and the statement made on page 7 of petitioner's brief as follows:

"Although thereafter in June 1938, the IAM obtained an agreement from respondents [Resp. Ex. 37, R. 156-157], the grievance committee called for by the agreement did not function either in 1939 or 1940, and insofar as the record shows, there was no IAM organizational activity among the respondents' employees after 1938 [R. 158-159]." (Pet. Br. 7.)

Are the respondents chargeable with this nonactivity of the grievance committee provided for under the IAM Agreement?

II.

The Board's Findings and Conclusions as to Respondents' Unfair Labor Practices:

"2. Respondents' Domination and Support of Employee Organizations; Accompanying Interference, Restraint, and Coercion." (Pet. Br. 7.)
As Urged by Petitioner Should Not Be Upheld.

THE CONTACT COMMITTEE.

The Contact Committee came into existence "following a vast increase in personnel in the early months of 1941" (Pet. Br. 7).

It is clear from Mr. Cannon's testimony and conceded by the petitioner's brief (p. 7) that this vast increase in personnel "coincided with the commencement of organizational activity of UE."

Engaged as Mr. Cannon was in the problem of taking care of a 4,000% increase in employees to the end that the company under such strenuous circumstances could produce upwards of 85% of all of the electrical connectors and contacts used in the war effort [R. 140] and during a large part of which time he was being harassed by would-be organizers of labor unions and other persons [R. 152, 155, 159] it is not surprising that he might have written letters or bulletins in terms perhaps more vigorous and colorful than more deliberate thought and less strenuous activity would have dictated. However, under the circumstances above mentioned it is respectfully submitted that Mr. Cannon showed a desire to give his employees every possible protection for their own good without regard to his own personal interests or those of his companies. Reference is made in petitioner's brief (pp. 7-9) wherein, President Cannon on May 20, 1941,

was "advocating the establishment of the Contact Committee for the purpose of considering complaints and suggestions of the employees . . . it (letter from Mr. Cannon of May 20, 1941) suggested that the employees hold an election on May 26, 1941, to select a 'contact man' from each foreman's group [R. 648]. *Foremen and executives were declared ineligible as 'Contact men'* [R. 648]. The letter provided that the Contact Committee elected by the employees select from among its membership *an executive committee of three to examine the complaints* and suggestions submitted by the individual committee men and to 'pass on to management such items as they consider worthy of consideration' [R. 649]." (Pet. Br. 8; emphasis supplied.)

The very nature of the letter as quoted in the petitioner's brief belies any attempt on the part of respondents to engage in any unfair labor practice. Written as it was in 1941 it could hardly be urged that it was a self-serving declaration. If the corporation (Pet. Br. 8) was willing to "furnish paid clerical help to help out" etc. (Pet. Br. 8), only if it proved desirable so to do ought not to be used against the respondents.

We respectfully call attention to note 11 on page 8 of petitioner's brief where among the other functions of the Contact Committee it was provided that such committee would "represent all workers and present their viewpoints for the *guidance of management.*" [Bd. Ex. 34.] (Emphasis supplied.)

We are aware of the fact that the mere suggestion will seem to our opponents as an intentional affront; none is intended, but it is difficult to imagine what more the respondents could have done other than what they did do to see that the election of the Contact Committee, its or-

ganization and actions were fair, honest and worthy of good employer-employee relations; statements in petitioner's brief (pp. 9-11) bear out this fact.

If "the IAM . . . was not then functioning as an organization of the corporations' employees" (Pet. Br. 10) that certainly was no fault of the respondents as above pointed out.

The suggestion (Pet. Br. 10) that Mr. Cannon's declared "opposition to closed shop contracts with the IAM and UE stands in marked contrast with his subsequent execution of a closed shop contract with the . . . CEA" is in our opinion a specious and unfair argument. In one breath petitioner argues that Mr. Cannon's declared opposition to a "closed shop" shows an antipathy toward labor organizations and in another breath petitioner argues that because Mr. Cannon was finally *required* as a result of an election (hereafter discussed) to comply with the specific provisions of Section 8(3) in making a "closed shop" contract with CEA, he was guilty of unfair labor practices. Section 8(3) is set out in part in the appendix to the petitioner's brief. It specifically sanctions an agreement which requires "as a condition of employment, membership" in a labor organization which is representative of the employees as provided for in the Act.

The argument smacks of damnation to one whether he does or does not provide for a closed shop in an agreement with the bargaining agent.

Can it be, with reason, contended that Mr. Cannon's flat declaration in the "penny post card" that the expression of the employee "would not interfere with his mem-

bership in any union" (Pet. Br. 11) meant absolutely nothing, except as the petitioner now contends that it was an unfair labor practice? Certainly not!

Petitioner next urges (Pet. Br. 12) that the Committee "had no constitution or by-laws and respondents' letter of May 20, 1941 . . . made no provision for dues, membership, or meetings of employees." Certainly nothing in the Act itself, nor indeed nothing in reason would hold that any committee acting as the bargaining agent for employees must *necessarily* have a constitution or provide for dues. Such committee would be just as valid if as a bargaining agent it was made up of men who gave without any expense whatever to the employees, the services of that committee. Will it be said that employees must be penalized by paying dues to some bargaining agent before such bargaining agent could be recognized as being lawful. Complaint is also made on page 12 that respondents' letter of May 20, 1941, made no provision for "meetings of employees." This is strange argument in face of many contentions made throughout the petitioner's brief that the very fact that the respondents did make available space where meetings could be held was regarded by petitioner as an unfair labor practice. Here again is a glaring example of the inconsistencies of petitioner's position. To recap: Petitioner contends that respondents' letter of May 20, 1941, which petitioner says advocated the establishment of a committee, made no provision for meetings and that that fact is an indication that respondents are guilty of the offenses charged; at other places in its brief (Pet. Br. 21, 22, 29) the action of the respondents in making available time and places for the holding of meetings is *condemned* by the petitioner.

Petitioner says that the Contact Committee was active until sometime in September, 1941, when "at the time pursuant to the suggestion of *employee* Ned Mandella, . . . the Committee met in the plant conference room and voted to disband" (Pet. Br. 12-13), and then petitioner has the temerity to suggest that "the record contains no evidence that respondents took any steps to advise the employees of that fact (that the Contact Committee was illegal) or to disestablish the Committee [R. 603-605]." If the petitioner admits that Mandella was only an *employee* and that it was through Mandella's own operations, and in no way connected with the respondents, that the CEA was disbanded, how is that chargeable as an offense against respondents? If the respondents had actually taken any steps to advise their employees that the Contact Committee was illegal under the Act or had actually taken any steps to disestablish the Contact Committee, then most certainly the petitioner would have been most vehement in declaring that such action on the part of the respondents was interference with the rights of the employees and that it was an unfair labor practice. The very fact that the respondents took *no* steps to disestablish the Contact Committee after the Committee had *itself* voted to disband is important evidence in showing that the respondents always maintained "hands off" policy and that the Contact Committee was in no way company dominated or controlled.

Nor should petitioner's contentions in its brief under
"b. The Cannon Employees Association
(1) Formation" (Pet. Br. 13)

be sustained.

Much of the argument under this section of the petitioner's brief begins and proceeds upon the premise that

Ned Mandella's operations were attributable to and binding upon the respondents even though such actions by Mandella may have been actually *in direct violation of law*, and even though Mandella knew they were in such direct violation of law. The premise is false and not in any sense justified by the evidence before the trial examiner. Mandella was nothing more than an "employee" of the respondents (Pet. Br. 12); "a tool crib attendant" (Pet. Br. 13).

Because it seems particularly pertinent at this point may we say again that the petitioner's brief itself is a very strong refutation of the charges made against the respondents. That brief is replete with instances where *any* utterance made or *any* act committed by *any* person whomsoever and whether or not that person was or ever had been connected with the respondents is taken against the respondents whereas the evidence given by responsible officers or employees of the respondents and which is favorable to the respondents is rejected as unreliable, if not altogether false. Even the mere *cursory* reading of petitioner's brief shows that there was almost a complete brushing aside of every declaration and act favorable to the respondents and that full credence was given to all of the evidence—oftentimes hearsay two or three times removed—that tended to discredit the respondents. *Careful* reading of petitioner's brief establishes the truth of the foregoing assertions beyond peradventure of doubt.

When George refused to join CERA and told Mandella that Mandella might "get himself in trouble" [R. 210] with his activities on behalf of CERA, Mandella was surely put on notice and at least George felt that Mandella's activities were improper. Even though petitioner says that Mr. Cromwell "approved and gave direct aid to

Mandella's organizational efforts 'to keep out the CIO' " that conclusion is not borne out by the instances cited. An examination of the record [R. 212-213] does not justify the implications which our opponents would like to have drawn that "the organization 'they were forming' " meant any organization that the respondents "were forming."

If the CEA and CERA were formed or kept under the domination or control or influence of respondents what would have been the necessity of so carefully protecting the ballots cast and the methods and places of voting of which the petitioner complains? (Pet. Br. 15-16.) If the CEA and CERA were so dominated and controlled there would be no point in respondents' guarding those ballots, etc. This same care was given in protecting from tampering the ballots cast in the "Board-conducted election" held on January 29, 1943 (Pet. Br. 27, 29).

That "CEA retained as its attorney Lewis, who had served CERA as its attorney" (Pet. Br. 17), indicates, clearly, Mr. Lewis was no tool or agent for the respondents; in fact, James H. Cannon strongly opposed keeping Lewis on as the attorney for CEA because his fees were coming out of the employees of the company [R. 539]. Nevertheless, Mr. Lewis was kept on as the attorney of CEA (Resp. Br. 17). Are those facts at all consistent with the present contention of the Board that CEA and CERA were mere tools of or dominated by the respondents? To ask the question is to answer it.

With respect to petitioner's declaration:

"(2) Respondents' interference with, support to, and domination of CEA prior to the Board-Conducted election of January 1943" (Pet. Br. 17).

we suggest: No one could or wants to question the fact that “following the organizational steps” under which was formed CEA, “CEA and UE engaged in rival campaigns for the allegiance of the employees which culminated on September 9, 1941, in a Board-election to determine the bargaining representative [R. 37, 39-40, 595, 709-710.” Pet. Br. 17-18]. We have considerable to say hereafter about these Board-elections but it might be well to here remind this court that each of the two Board-elections was brought about through the making of charges against the respondents by and between the rival unions very much the same as (and in some instances absolutely identical with) the charges made against the respondents in petitioner’s brief.

Here again the petitioners seek to punish the respondents for the sins of Mandella, the “employee” and “tool crib attendant,” and of the “employee” Monjar who the petitioner contends, “actively solicited her co-workers to join CEA” but who later became an ardent supporter of the UE and upon whose testimony to a very large extent the Board relies for its findings.

It is true that the *employee* Monjar flagrantly violated the Act and engaged in organizational activity on behalf of CEA; later turned around and on behalf of UE engaged in organizational activities, all in direct violation of law. She now complains of her activities carried on in behalf of CEA. She then testified on behalf of the Board. All of these facts force the conclusion that her testimony was unreliable and should be disregarded. She was no witness of mean ability. We respectfully invite the court to read her testimony [R. 343-380]. She was the most willing, versatile, vitriolic and opinionated witness in the whole case. A vast amount of the evidence which she gave was

such that it could not, *by its very nature*, be contradicted. Her conversations with others, and many of the things she heard were hearsay—unknown to the respondents—and there was no possibility of refutation.

Apparently the respondents learned of some improper organizational activities of certain of their employees and thereupon promptly and about August 15, 1941, as pointed out in petitioner's brief, page 18, "issued a booklet for its employees entitled 'Employee Information and Regulation,' which provided, *inter alia*, that employees were not to solicit membership in any organization 'during working hours or on company property.'" Does not this last quoted statement from the petitioner's brief exemplify a practice too frequently indulged in of a "pot calling a kettle black," viz., CEA and UE having each "continued organizational activity on company time and property" (Pet. Br. 18) in violation of the Act itself, and then seek to enforce the Board's order against the respondents for the very benefit of these law breakers and regulation violators!

There is not the slightest thing in this record which could possibly rise to the dignity of evidence that shows that the respondents dealt with the organizational activities of the two unions in different ways. The occurrences set out in page 19 of petitioner's brief are not shown to have been brought to the attention of the respondents and many of them are so trivial as to merit no attention.

It is not fair to attribute to Foreman McClung's statement (Pet. Br. 20), "Well, we won the election" the meaning that petitioner seeks to imply that it meant, that "we"—the respondents and McClung won the election. It is more reasonable to believe that by "we" Mr. McClung

meant those with whom he was associated, that is, the CEA.

After the election was over—and in which election CEA defeated UE by a vote of 370 to 268 [R. 709-710]—it is not surprising—but it certainly ought not to be damning—that some individual in his exuberance or in a playful mood should tell an employee that he had “better join the CEA” or that another employee should be asked to cease wearing a CIO pin (Pet. Br. 20).

Another glaring inconsistency in petitioner’s position is the comment in the paragraph beginning at the bottom of page 20 of petitioner’s brief concerning President Cannon’s “earlier pronouncement to his employees that the plant would never be operated as a ‘closed shop,’ ” whereas the CEA agreement made October 24, 1941, “required respondents to employ ‘only members of the (CEA) in good standing.’ ” To cap it all off in inconsistencies the brief points out that “respondents opposed the inclusion of a union security clause in their contract with CEA.” (Pet. Br. 21.) Where on earth can such recitals be used by the petitioner as an argument in an effort to sustain these findings!

The statement (Pet. Br. 24) that “with the renewal of organizational activity by UE during 1942, President Cannon distributed among the employees several letters which attacked that organization and gave further support to CEA (these letters are set forth in the Record at pages 671-689)” is simply contrary to the fact. The letters so demonstrate.

We earnestly feel that the severity of the criticism made by petitioner against Mr. Cannon’s letter [R. 689; Pet. Br. 25] is not fair and the conclusions which the Board seeks to draw from that letter are groundless. The

twisting around (Pet. Br. 26) of the language in the letter of November 11, 1942 [R. 685 at 688] is manifestly improper. Nowhere in that letter by innuendo, inference or otherwise could it be said that Mr. Cannon intended that by using the language "we can accomplish even better results than those already obtained" [R. 688] he meant that the respondents *in conjunction with or through domination of CEA* could accomplish these better results. Note his language:

"You have an organization in the form of a union that is supposed to be fully Democratic and to represent you.

"A Company dominated Union would defeat its own purpose as has been demonstrated in many national instances, but an employees' union that is not representative and not democratic serves the interest of no one except the ones in the saddle.

"I understand you have now passed judgment on a new set of by-laws that are liberal enough to enable you to govern your own affairs by representative majority backing, in which case we can accomplish even better results than those already obtained" [Bd. Ex. 23; R. 687-688].

The next subheading under the petitioner's brief is found at page 26 where it is declared:

"(3) Respondents' interference with, support to, and domination of, CEA after the Board-conducted election of January 1943" (Pet. Br. 26).

As previously stated we will discuss later in this brief the different elections conducted under the direc-

tion and supervision of the Board but we cannot refrain at this point from quoting the petitioner:

“The election was held on January 24, 1943, and CEA again polled a majority [R. 47; Bd. Ex. 68K]. Subsequently, the Board in a Supplemental Decision and Certification, issued on April 12, 1943, certified CEA as bargaining representative of respondents’ employees and overruled objections filed by UE alleging that respondents had illegally assisted CEA prior to the election [R. 47-48; Bd. Ex. 68P].” (Pet. Br. 26.)

There certainly could be no objection by the Board or by the complaining unions that the CEA written contract provided that the respondents “would discharge employees who had been expelled from CEA membership for failure to pay dues [Bd. Ex. 9, pp. 7-8]” or that “the contract also provided for the dismissal of employees expelled from CEA for reasons other than the non-payment of dues,” particularly since “in such cases an arbitration procedure was made available if respondents disputed the propriety of the reasons upon which CEA based the expulsion [Bd. Ex. 29, p. 28]” (Pet. Br. 27). It seems to us the Board itself and the complaining unions should not object that the CEA contract with respondents provided that dues could only be deducted from the wages of employees *who authorized the check-off procedure* (Pet. Br. 27).

In short, the specific provisions of the CEA contract with the respondents were authorized under the Act and the provisions therein adverted to in the petitioner’s brief belied the very suggestion that the respondents dominated and controlled CEA.

As one of the evidences of respondents’ interference with and domination of CEA, petitioner points out on page 27 of its brief that in the spring of 1943 the presi-

dent of CEA was told by President Cannon that Cannon "didn't approve of Mr. Lewis' being the association attorney because . . . the employees were paying him out of their wages" [R. 539; Pet. Br. 27] but this was only after a campaign had already begun among the officials of CEA to rid themselves of Mr. Lewis' services [R. 539]. However laudible may have been Mr. Cannon's suggestion in the interest of the employees, the writer of the petitioner's brief seeks to make a great deal of this expression of views. It is important however to bear in mind that there is not the slightest suggestion in the evidence that Mr. Lewis was objectionable to Mr. Cannon because Mr. Cannon had any desire to dominate or control CEA or to prevent it from having the best legal advice possible; the financial interests of the employees was the sole moving factor in this altogether casual remark of President Cannon.

The Board says that a year and three months later, "in about May, 1944, Robert Cannon, then vice-president of the corporation [R. 599], *similarly intruded* in the affairs of CEA" (Pet. Br. 28; emphasis supplied). Then in petitioner's brief certain recitals are made concerning Rachel McBurnie, Mr. Gibson, Mr. Robert Cannon and Mr. Richard Franklin which are so trivial as to be undeserving of much comment. The trivialities appear in the brief itself on page 28 but the original record [pp. 452 *et seq.*] clearly shows that the conclusions that the petitioner would like to have drawn from the episode are in no way justified. Because Mr. Cannon said "that 'Mr. Franklin had made a good business agent' [R. 454]" (Pet. Br. 28) could not be "interference" if it were multiplied by 100. Suppose Mr. Cannon instead of saying Mr. Franklin had been a good business agent had said that he had been a *bad* business agent and had also said that

CEA and the respondents had *not* gotten along very nicely. Would that have been “interference” or an unfair labor practice? What is an official of the company supposed to do when someone seeks and is given an interview? Should he stand dumb and say nothing or talk about the weather? By no stretch of the imagination it seems to us, can the remarks of vice-president Cannon be construed as improper.

The writer of petitioner’s brief sees some evil in the fact that “one of respondents’ guards, was dressed *in a business suit*” watching the box where the ballots were deposited when the election was held by CEA members to determine whether or not they wished to retain Franklin and Gibson or other CEA directors who had voted for the ouster of Franklin (Pet. Br. 29). Does the dressing of this guard in a business suit make any difference? Would it have been more or less of a grievance if that employee of the respondents had been dressed in a company uniform? There could not possibly have been any intimidation or wrongful act in allowing this guard or Cal Cannon, in the employ of the respondents, to watch the ballot box or care for the box and the ballots after the voting had been done.

In recent years particularly, some strange things have been done for the ostensible purpose of assisting labor and improving working conditions and increasing wages for the workmen. In the abstract and if the declared purposes were in fact carried out it would be most salutary and desirable but there ought to be some consistency in the application of standards of conduct which apply both to the employer as well as to the employee. In labor cases as in other cases the credibility and reliability of witnesses should be tested by the interest or lack of interest of the witnesses testifying, their apparent frankness or

lack of it, etc. It seems to us that these general principles should be conceded by the petitioner. However, petitioner's brief shows not only indifference but direct opposition to these principles in seeking to sustain the Board's order (Pet. Br. 30-32). If the shop stewards in Mrs. McBurnie's department did hold a meeting in the plant cafeteria on company time at which they elected Mrs. McBurnie as chief steward for her shift, and if Mrs. McBurnie was absent from her work for an hour to attend this CEA meeting and if no deduction was made from her pay for the time so spent away from her work on CEA business and if Employee Caffarel, one time president of CEA, frequently absented himself from his work throughout his incumbency as an officer of CEA without any loss of pay and if John Gibson, as president of CEA used company time in connection with the affairs of CEA, it seems most unusual that these very persons for whose direct benefit these proceedings were brought and who, themselves, knowingly violated the Act—if those things were violations of the Act—should now be called upon as the chief witnesses to substantiate the charges of unfair labor practices! There can be no doubt that the testimony of Mrs. McBurnie, Mr. Caffarel, Mr. Gibson and these other former CEA officials who were called upon to testify against the respondents should be so tested. The entire testimony of each of these witnesses so reeks of prejudice against the respondents and CEA that it should be utterly disbelieved or disregarded; certainly it should be most carefully scrutinized.

That CEA ceased to be active as a labor organization of respondents' employees in March, 1945, and advised the respondents that its members had voted on March 13 to become members of Mechanics Educational Society of America, Local 75, and that henceforth the society was

the exclusive bargaining agent for respondents' employees, etc. (Pet. Br. 31), is not specifically urged by the petitioner as being any part of any unfair labor practice, nor could it be so charged.

III.

The Conclusions Discussed by Petitioner Under:

**"3. Respondent's Discharges in Violation of Section 8(3) of the Act." (Pet. Br. 32.)
Are Unsound.**

Under this particular subdivision in petitioner's brief, petitioner first discusses:

"1. The Discharges of June 12, 1943" (Pet. Br. 32) and contends that the discharge of Erma A. Evenstad, Vivian Sullivan, Monna M. Nye, Joan Lawrence, and Clarence Youngberg were unjustified and tend to sustain the order of the Board.

Petitioner does not contend that the discharge of these last five named employees was not imposed upon the respondents by the collective bargaining contract of May 5, 1943; in other words, it is virtually conceded that under the terms of that collective bargaining contract and the demands made upon the respondents by CEA, the respondents had no alternative but to discharge them. The collective bargaining agreement required membership in the CEA as a condition of employment and provided that the respondents would dismiss employees expelled from the CEA because of dues delinquency [Bd. Ex. 29, p. 8]. That agreement further provided that in cases of employees expelled from CEA for reasons other than dues delinquency, the respondents might take such request for discharge to arbitration, if the respondents did not agree with the reasons furnished by CEA for the discharge of

the employees [Bd. Ex. 29, pp. 7-8]. It is conceded (Pet. Br. 33) that the five employees here under discussion had distributed a letter among the other employees of the respondents asserting that these five employees did not intend to join CEA. Later CEA served each of the signers of that letter (including the five employees here under discussion) with a complaint accusing them of violating the by-laws of CEA and stating that a hearing on the charges would be held on June 8, 1943 (Pet. Br. 33).

On June 8, 1943, the date set for the hearing, the five employees in question sent out a second letter stating that they would not attend the CEA hearing [R. 410, 411, 419-420, 436, 631, 695; Pet. Br. 33].

On June 9, 1943, the CEA advised the respondents that the employees now under discussion had been expelled from CEA because of infractions of the by-laws and because of dues delinquencies and thereafter CEA demanded that these employees be discharged by the respondents within seven days all in accordance with its agreement of May 5, 1943 [Resp. Ex. 2; R. 707]. The employees, Erma A. Evenstad, Vivian Sullivan, Monna M. Nye, Joan Lawrence, and Clarence Youngberg were discharged "as per agreement" with CEA and which agreement *required* the respondents to do this very thing.

If the contract between the respondents and CEA [dated May 5, 1943; Bd. Ex. 29] was a valid subsisting contract, the discharge of Evenstad, Sullivan, Nye, Lawrence and Youngberg was not only justified, but required; the respondents had no alternative. Even if it be true that certain of these last named dischargees had been active in UE, notably in the signing and publication of certain bulletins, there is no evidence whatever that such

activities in UE had anything whatever to do with those discharges by the respondents.

The next thing petitioner singles out for discussion is—

“(2) The discharge of Armant” (Pet. Br. 34).

That Armant had been an active UE member, had declined to join the CEA but after the election of September 9, 1941 (which was won by CEA) he did join CEA and later became a candidate for election to the Board of Directors of CEA (Pet. Br. 34-35), those facts or none of the other facts referred to in the petitioner's argument resulted in Armant's discharge. The reading of the petitioner's arguments clearly demonstrate, in our view, the desire of the respondents to do everything the respondents could possibly do to protect his interests, and the rights of the UE, of which he was a member and of all others properly concerned, the imputations contained in petitioner's brief to the contrary notwithstanding.

Surely no one in his right mind would think that the respondents would knowingly permit—much less encourage—any requirement by anybody that a prospective employee would have to “pay fees to private employment agencies in order to secure jobs with the company [R. 296-298]” (Pet. Br. 35). In spite of the charges made against Armant by CEA and although his card had been pulled from the rack, Mr. Armant did not see fit to contact the respondents but “he telephoned Mandella at the CEA office who told him that he was discharged [R. 311]. Armant then communicated with the CIO which called in the services of a Federal Conciliator [R. 310, 312]. Thereafter on August 27, 1942, Armant broadcast over the radio under the sponsorship of UE an account of his discharge [Bd. Ex. 48; R. 335, 340-341]. About 2 weeks

after his discharge, Armant was reinstated and received back pay for the time lost [R. 313]" (Pet. Br. 36).

Nothing whatever appears in the record to indicate that *his reinstatement about two weeks after his discharge and receipt of back pay* for the time lost was the result of any pressure put upon the respondents; it was the voluntary act of the respondents.

What better evidence of coercion of *the respondents by CEA* could possibly be shown than the facts related at pages 36 and 37 of petitioner's brief? What more in the interest of fairness could possibly have been done by respondents and was done in trying to ferret out the difficulties between Armant and CEA? The shut down of this plant even for so short a time as did occur in this instance was most hazardous to the country's defense. Mandella "stated that the employees were 'out on strike and would not go back to work as long as Mr. Armant was in the plant'" (Pet. Br. 36). The matter did go to arbitration and after that hearing Federal Conciliator Livingston reported the results to Armant. There is some complaint in the brief that Armant was "never advised . . . directly about this [R. 324]" (Pet. Br. 37), but it is clear that when Mr. Armant came to Mr. Wilcox, the personnel manager of the respondents, he was told by Mr. Wilcox that he could not put him back to work [R. 326].

Then Mr. Armant filed his suit in the state court with the result as shown in the Findings of Fact and Conclusions of Law and the Judgment in the Superior Court of Los Angeles County, California [Bd. Exs. 73 and 74].

A short résumé of the "Armant incidents" might be helpful. On December 3, 1941 [Resp. Ex. 10A], he was

ordered discharged by letters from CEA addressed to Cannon Manufacturing Corporation. The reason given was that CEA had refused to accept him as a member and consequently CEA demanded "the immediate dismissal of him." On that same date [Resp. Ex. 10D] respondents advised CEA that their action was discriminatory and not agreeable to the company and thereupon Mr. Lewis, CEA's attorney, wrote his letter of December 3, 1941 [Resp. Ex. 11] insisting upon the rights of CEA to determine its membership and by the same token and under its contract of October 4, 1941, the right to determine who could or could not work for the company.

In spite of all of these demands by CEA and its representatives, the company took no precipitous action against Armant. He had run for office on the Board of Directors and apparently the election had been fairly conducted, at least, he made no complaint that it was unfair, and he was defeated for the Board of Directors of CEA.

Feeling between him and certain of the directors and officials of CEA increased in intensity. A hearing was held on the "due to unpleasant circumstances" [letter of July 31, 1942, Bd. Ex. 37, R. 693], which hearing was neither controlled, directed nor influenced by the respondents [R. 305-309].

Under date of June 27, 1942 [Resp. Ex. 6], CEA had advised Robert J. Cannon of the respondents that Armant and several other persons were "corrupting the morale of the other employees with false propaganda," and "therefore the Board of Directors, in quorum, demanded the immediate dismissal of the above parties." The respondents were not satisfied with any such peremptory demand and wrote their letter of July 3, 1942, to the CEA stating that "we have no information in regard to whether

or not these persons are holding up production, or are in any other manner a bad influence," and advising that "if further information were furnished" to the respondents, the respondents "would be glad to consider the matter further."

Certainly this exchange of correspondence does not indicate, nor does anything else in the entire record indicate any illegal discharge of Armant.

Armant testified that CEA officers told him after his first hearing that he, Armant, would be discharged by the respondents [R. 309, 336], but the fact is that Armant was not so discharged; he went back to work for at least two weeks. *Then his card was not in the rack. This action, however, is not the discharge complained of in these proceedings.*

Armant took the matter up with the CIO and Mr. Livingston, United States Commissioner Conciliation Service [Resp. Ex. 14A; R. 310, 312, 317] and an arbitration hearing was held. This arbitration hearing was with the consent and knowledge of the Labor Board itself and during that hearing Navy Lt. Comm. Powell sat in as an observer [R. 320-321]. When Armant and Fellows were returned to work through the intervention of Mr. Livingston, the "strike" or what to Robert J. Cannon and Mr. Hawkinson appeared to be a strike, or a threatened strike, occurred in the cafeteria and it was then that Mr. Armant was asked to leave, *upon the assurance that he would be paid for the time that he was off* [R. 597].

That arbitration hearing resulted in Fellows' being reinstated and Armant's being discharged [R. 602]. Under these circumstances, it is not conceivable that this hearing was arbitrary, capricious or unfair. In the first place Lt. Comm. Powell would not have stood for it, and

most certainly Mr. Livingston would not have consented to any such a proceeding. The evidence is clear that Mr. Livingston was there during the whole of the hearing. The respondents were faced with the absolute necessity of discharging Mr. Armant upon his being rejected as a member of the CEA and upon his dismissal from membership in the CEA. Legally speaking, if the contract of employment under which the plant was being operated was valid and subsisting, the respondents had no right to review the action of CEA in refusing to accept a member or expelling a member for infraction of its rules, by-laws or constitution.

We now come to a discussion on that portion of petitioner's brief headed:

“(3) The discharges of Caffarel and Maynard”
(Pet. Br. 38).

Very cogent written evidence of the flagrant inconsistency in petitioner's Order and Findings and in the brief of the petitioner is found in the footnote on page 40 of petitioner's brief.

It seems to us to be a most remarkable conclusion inasmuch as the only evidence of substance in the case so far as concerns Maynard's discharge, is that furnished by Mrs. Maynard herself, viz., that she had already tendered her resignation from the respondents and was not discharged; yet “despite her own statement” (that she did resign), the Board finds that she “did *not* resign (emphasis supplied) [R. 83].” (Pet. Br. 40.)

In other words, the Board not only disregarded the creditable written statement of Mrs. Maynard that she was not discharged but made a finding and an order in direct opposition to that evidence. How, we ask, may such action on the part of the Board be justified?

As to Herbert Caffarel: He began work for respondents in 1940 and for two years worked as relief man in the punch press department; in the early part of 1941 he solicited employees to join CERA [R. 479-486]; became active in the Contact Committee [R. 494] and became chairman of that organization and continued as such chairman until the Committee was dissolved [R. 494-507]; resumed his activities on behalf of CERA which was then known as CEA [R. 509]; elected in November, 1942, to the Board of Directors of CEA [R. 510] and thereafter became president of this organization. All of the foregoing facts are conceded in the petitioner's brief (pp. 38-39); in fact, they are urged in that brief as being some evidence of unfair labor practices or undue influence by the respondents.

Further continuing the petitioner points out certain differences which arose between the employee Gibson and the employee Maynard and one Franklin who was an employee as the business agent of CEA and with whose policies Caffarel did not agree. Formal notice was served on the respondents by CEA of the expulsion of Florence Maynard and Herbert Caffarel "from membership in the CEA" which notice in effect demanded that they be discharged [Resp. Ex. 26, R. 710]. In response to this demand the respondents asked for details of specific charges on which those people had been tried and convicted [Bd. Ex. 27; R. 711]. Particular attention is called to the testimony [R. 533-535] showing the formality and thoroughness with which the hearing was conducted by CEA bearing upon the expulsion from CEA of Mr. Caffarel and Mrs. Maynard. While the respondents hold no brief for CEA, nevertheless it seems that the action of CEA at that hearing was neither arbitrary nor capricious. If the method of conducting that hearing

was not to the present liking of the people who had been officers and directors and members of CEA (Maynard and Caffarel, *et al.*) that fault lies with the CEA and with its past and present officers, members and directors and not with the respondents.

On many and many occasions as appears from this record and in petitioner's brief, the decisions of the respondents, whatever they might have been were bound to be wrong in the view of one group or the other.

With respect to the next point sought to be made in the petitioner's brief, viz.,

“(4) The Board's conclusions with respect to the discharges requested by CEA.” (Pet Br. 40.)

we can only say that *based upon the premise that the contract between the respondents and CEA was illegal or void*, the conclusion of the Board in respect to these discharges is probably well founded. However, it is our contention that that premise is not well founded and that the contract between the respondents and CEA was good, valid and subsisting and that it necessarily follows that the discharge of these employees (Maynard was never discharged but voluntarily resigned) was justified both in law and in fact.

We now proceed to a discussion of that portion of the petitioner's brief entitled

“b. The discharge of George for UE activity”
(Pet. Br. 40).

We respectfully submit that the statement of Mr. Cromwell that "they were forming" an organization [R. 213-214; Pet. Br. 41] is not within reason chargeable against the company because in the first place there is no evidence that Cromwell meant by that statement to include anyone except the organizers of CEA; surely, he did not mean himself and the respondents. The statement attributed to Cromwell that "Mandella's activity 'was all right and the company knew about what he was doing' [R. 213]" (Pet. Br. 41) is the rankest kind of hearsay and ought not to be given any credence whatsoever as being binding upon these respondents.

A brief review of the Alvin L. George incidents ought to absolve the respondents from any charge of violations of the Act insofar as concerns George. Respondent's Exhibit 9, dated December 4, 1941 [Resp. Ex. 9], shows that CEA demanded the immediate dismissal of George because CEA had refused to accept him as a member of the Association; assuming that George was discharged by Cromwell on or about the time he made the radio speech on August 26, 1941 [Bd. Ex. 30], *that is not the discharge upon which complaint is made*. The strike occurred on September 2, 1941, and wound up in the Board office before Mr. Walsh, a regional director at Los Angeles [R. 228]. Feelings ran high and it was finally determined by agreement to reinstate George and to settle the matter by arbitration. Bd. Exs. 32 and 33 show the result of that hearing; that it was fair to George there can be no doubt. He himself testified that he was called into the hearing room and asked if

he accepted the decision of the arbiters and he stated that he did so accept it and was satisfied with it [see Bd. Exs. 32 and 33, *supra*].

The fact, if it be a fact, that Cromwell told George that he would “get” him within 45 days after Mr. George actually returned to work (Pet. Br. 42) should not be charged against the company because there is no evidence that the respondents knew it and after the discussion between George and Cromwell in which each expressed his opinion of Harry Bridges, the fact that Cromwell became angry and told George, “we would all get our heads cut off someday” [R. 242-243] does in no sense mean that the respondents were engaged in unfair labor practices. Such statement may have been Cromwell’s own personal feelings concerning the general unrest in the country; certainly there was nothing in such statement to indicate that it was done to intimidate or coerce George through anything that the respondents did or said.

The matter covered in pages 42 and 43 of petitioner’s brief regarding some gossip between Gibson, George and Monjar is really so trivial as to make it unworthy of discussion.

Mr. George’s testimony should be scurtinized very carefully. Early in his employment he knew that Mandella was doing things in violation of the law in trying to organize the plant on company time; he remonstrated with Mandella because of the fact [R. 212]. George actually sold Mandella a public address system to assist Mandella in his solicitation. [R. 217.]

IV.

The Board Conducted Elections—Each Won by CEA—and Which Resulted in Certifying CEA as Bargaining Representative and in the Making of the Contract Between Respondents and CEA Should Preclude the Enforcement of the Board's Order.

There were two such elections; one held September 9, 1941, and the other held January 25, 1943.

The 1941 election arose under the following circumstances:

On June 9, 1941, CEA filed with the Board a Petition for an Investigation and Certification of Representatives [R. 37; Bd. Ex. 68A]. Thereafter on September 2, 1941, UE called a strike of the respondents' employees and thereupon the local representatives of the Armed Services and of the Office of Production Management arranged a conference with interested parties at the Regional Office of the Board, which conference was attended by representatives of UE, CEA and the respondents. UE agreed to terminate the strike, respondents agreed to reinstate certain discharged employees subject to arbitration and the parties agreed to a consent election on the petition before the Board [R. 39-40].

The Certificate of Results of Consent Election dated September 10, 1941 [Resp Ex. 12B; R. 709] shows that CEA had 370 votes and UE 268 votes. Thereupon the Regional Director of the Board certified the outcome of the election.

About October 24, 1941, after negotiations, the respondents and CEA executed the agreement covering the employees' rights of service, working conditions, etc. [R. 42].

The election of January 25, 1943, arose under the following circumstances:

On September 21, 1942, UE filed with the Board a Petition for Certification as bargaining representative of respondents' employees [R. 47; Bd. Ex. 68A]. A Decision and Direction of Election was issued by the Board on December 31, 1942. [Bd. Ex. 68E.] The election was held on January 25, 1943, and CEA again received a majority of the valid votes cast. On January 30, 1943, UE filed objections alleging in substance, that the respondents had illegally assisted CEA prior to the election [R. 47; Bd. Ex. 68M], and at the same time UE filed formal charges [R. 47], alleging generally that the companies had violated Sections 8(1) and (2) of the Act.

On March 18, 1943, the Regional Director notified UE of his refusal to issue a complaint and filed a Report on Objections [R. 48] which concluded that none of the objections raised substantial or material issues. In a supplemental Decision and Certification of Representatives issued April 12, 1943, the Board overruled the objections and certified CEA [R. 48].

Thereafter on May 5, 1943, the respondents and CEA executed a new agreement [R. 48].

On page 51 of its brief, and with respect to respondents' view that by certifying CEA after the election of January 25, 1943, petitioner stated that respondents' contention that the Board's action in certifying CEA following the election of January 25, 1943, precluded the Board from examining respondents' conduct prior to the 1943 certification in the instant proceeding, said: "A similar contention was squarely rejected by the Supreme Court in *Wallace Corporation v. NLRB*, 323 U. S. 248, 253-

255.” Petitioner also cites *NLRB v. Gilfillan Brothers*, 148 F. 2d 990 at 991.

The dissimilarity between the instant case and the *Wallace* and *Gilfillan* cases is at once apparent; those cited cases are not authorities against respondents’ contentions.

In *Wallace Corp. v. NLRB*, *supra*, the report expressly declares that the contract made between the company and Independent Union, which contract was under attack, “was executed after notice to the company by the business manager of Independent that Independent must have the right to refuse membership to old CIO employees who might jeopardize its majority. This business manager (of Independent) . . . wrote the company, prior to the making of the contract, that Independent insisted upon a closed shop agreement because it wanted a ‘legal means of disposing of any present employees’ who might affect its majority, and ‘who are unfavorable to our interests.’ The contract further significantly provided that the company would be released from the clause requiring it to retain in its employ union men only, if Independent should lose its majority and the CIO win it.”

The report also points out that the Board and the lower court expressly found “that the contract was signed with knowledge on the part of the company that Independent proposed to refuse to admit them (former CIO employees) to membership.”

How different is the instant case where the CEA contracts specifically provided that everybody in the employ of the company could join CEA.

In the *Gilfillan* case cited by petitioner the facts are very much different and call for different application of the law than do the facts of the instant case. In the *Gilfillan* case the intra-company union, known as the Association, won an election over the CIO by which the Association was certified by the Board. Thereafter CIO filed a charge with the Board alleging that the respondent had “encouraged and otherwise interfered with the formation” of the Association, upon the promise of the Association that it would not in the future dominate or interfere with the administration of the Association, or any other labor organization having to do with its employees. Then CIO withdrew the charge. The charge was never acted upon and *no election was thereafter held*. The court points out that because of those facts and because the “dominating acts *before* the certification followed by such domination *thereafter*” gave the Board the right to consider the circumstances under which the Association was formed and operated and acted as the bargaining agent.

In the instant case not only were two elections held but the charges filed by the UE were ruled upon adversely to the UE and an election was thereafter held; objections were then filed by the UE to the certification of the CEA as a bargaining representative but the objections were denied by the Board.

V.

The Enforcement Order Sought Here Should Not Be Made Because of Delay in Bringing These Proceedings.

This court has wide discretionary powers in the relief administered as a result of this petition. This court may enforce, modify or enforce as so modified, or set aside in whole or in part the order of the Board.

The fact that the Trial Examiner passed away before he had a chance to prepare the proposed Findings of Fact and those proposed Findings of Fact had to be prepared by someone who had not seen the witnesses on the stand, their demeanor, etc., is one reason that these Findings of Fact and the order based thereon should not be held of the same sanctity as the Findings of a trier of fact who has had a chance to observe the witnesses on the stand, their demeanor, etc. That one year, six months and nine days should elapse after the close of the hearing before the order sought to be here enforced was made and another two years and fifteen days elapsed before the petitioner filed these proceedings in this court, should be considered by this court in relieving the respondents from the disastrous effect of the order. We recognize that the Act as it existed when these proceedings were first before the Board contains no limitation period, but nevertheless neither law nor equity favor the prosecution of stale claims.

“This is another of those dreary reviews of Board proceedings” where respondents attack the “Findings of Fact *made* by the Board, as trier of facts, on evidence *presented* by the Board as prosecutor in support of charges *filed* by the Board as complainant.” (*NLRB v. Caroline Mills, Inc.*, C. C. A. 5-1948.) (Emphasis supplied.)

Conclusion.

It is respectfully submitted that as set out on page 58 of the petitioner's brief this Honorable Court in determining this matter may enforce, modify or enforce as so modified or set aside in whole or in part the order of the Board.

The respondents have made proper objection and urged before "the Board its member, agent or agency" the points upon which the above mentioned errors are based. [For a few of many examples see, R. 168, 204, 206, 207, 209, 211.] In *Marshall Field & Co., v. NLRB*, 318 U. S. 253 (Pet. Br. 55), the court pointed out they would not consider the objections made by the employer saying "we do not find that *at any stage of the proceedings*, the objection now urged . . . was presented to it or to any member or agent of the Board . . ." In *NLRB v. Cheney California Lumber Co.*, 327 U. S. 385, also cited by petitioner, same general rule is announced.

For all of the reasons above set out the order of the Board should be set aside or so modified as to this court seems proper.

Dated: July 30, 1949.

Respectfully submitted,

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